



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

MEMORIAL
OF
CHARLES GRATIOT,

STATING

That he had been unjustly dismissed from the Army of the United States, and asking an expression of the opinion of the Senate as to the legality of the course pursued towards him.

JANUARY 15, 1852.

Ordered to be referred to the Committee on the Judiciary, and printed in confidence for the use of the Senate.

To the Senate of the United States :

The memorial of the undersigned respectfully shows, that, being a graduate of the military academy, he entered the army at an early period, and continued therein until 1838, when, by the order of President Van Buren, he was *dismissed the service*. He is advised by persons skilled in law, and believes that this exercised power, in his case, was illegal, and should not have effect against him. Under this impression, he submitted the matter to President Fillmore, in the hope he might obtain redress of his conceived wrongs. In December, 1850, he gave his answer, that "the act itself was constitutional and perfect; and nothing can restore him (your memorialist) but the appointing power, re-exerted in his favor; and this power consists not of the President alone, but of the President and Senate." (See the end of paper A, page 15.)

The inference is that the President is indisposed to take any initiatory step without the advice of the Senate; and it is to that end, and for that purpose, that your memorialist respectfully asks permission to approach your honorable body, that an expression of opinion may be had as to the legality of the course which was adopted towards him.

History shows that the tendency of power is to oppress; and it is happy for the citizen when an appellate-revisory power exists, that can look into the committed wrong, and advise a reparation. The details of the case, fully considered, will be found in paper A, page 3.

By some it is insisted that, at mere pleasure, the President may dismiss an officer from service; by others it is denied. If such power exist, it is manifestly unjust to the army, with danger to the country; certainly it is not authorized by any law, and if claimed from any other source, the answer is, there are no prerogative rights in this country. Rightfully, the President can do no act which is not permitted to be done by the constitution or some law flowing from it; then are his acts legitimate; but otherwise they are void. (See opinions of the supreme court and of Mr.

Hamilton, *printer*.

Attorney General, to wit: pages 6 and 7, of paper A; also that of Major General W. Scott, Appendix (14.)

The belief is not to be entertained that we shall always remain a pure and virtuous people. In some future time various inclinations may overtake us, and hence the necessity of interposing suitable safeguards. Admit the existence of such power, and at some dangerous crisis, a popular and successful general might be arrested in his course of operations, and with no other view than to assist an invading army to subvert the liberty of the country.

But concede that the President does possess this power, yet, if in exercising it, he gives reasons which do not exist, or are false upon their face, then the general power cannot be resorted to, whereby to cover the error or wrong committed.

In the dismissal of your memorialist, the order is "for having failed to pay into the treasury the balance of the money placed in his hands in 1835, for public purposes, after suspending therefrom the amount which he claims to be due him on settlement of accounts, according to the President's order, communicated to him by the Secretary of War, on the 28th November, 1838; and having neglected to render his accounts in obedience to the law of January 31, 1823. (See House Document No. 77, third session, twenty-fifth Congress, page 14; also, Register United States Military Academy, page 53. Appendix No. 15.)

The assumed grounds on the part of the President, are,

1st. He failed to pay into the treasury money placed in hands in 1835.

2d. He neglected to render his accounts as the law of 31st January, 1823, required.

The second charge is disproved, and of course falls. (See testimony marked B—Fowler's Letter and that of the Third Auditor.)

That testimony conclusively shows that your memorialist's accounts and vouchers had been quarterly rendered, and hence the letter nor the spirit of the act did not apply. Under the provisions and terms, then, of this act, the President had no power to dismiss, because such neglect as the act refers to did not exist. Consequently the act was inoperative for any such purpose. Vouchers were returned—accounts were rendered, and of course, the penalty imposed by the law (dismissal) failed to attach.

Again, there was a balance which "ordered," was not paid over to the treasury.

Now the only statute applicable to such a condition of things as this, is the act of January 25, 1828, and that authorizes nothing more than that, under such circumstances, the officer guilty of the imputed offence shall have his pay sequestered—stopped, until the claimed debt be liquidated. No other legal authority, as derived from the act of Congress, existed; and yet it was upon these the dismissal took place. In regard to them, the President misconceived his power, and having based his action on them, no general prerogative power, if any such exist, can be claimed to warrant the dismissal of your memorialist from the public service; and yet he was dismissed, contrary to any act of Congress; and contrary to any prerogative right which pertained to the President.

Be it that he omitted to pay over on demand public moneys resting in his hands, he answers that, in his belief, the amount retained was justly due to him, as creditor of the United States. If he was wrong, a civil suit or a court-martial should have been instituted against him; but it is

denied that the President could exercise any other power than the law conferred on him, and having claimed to exercise it, his act of dismissal is void.

Your memorialist further shows in the evidence referred to in the papers, that his accounts with the treasury were not officially settled till after the date of his dismissal ; consequently, the President, in demanding the payment of a specific sum of money, did so in assumption, and not that the legal forms of arriving at a sure balance had been gone through, upon which to base his action.

And your memorialist will ever pray.

C. GRATIOT,

Colonel Corps of Engineers and Brevet Brigadier General U. S. Army.

WASHINGTON CITY, December 3, 1851.

A.

General Gratiot's letter to the President and his decision thereon.

WASHINGTON, November 23, 1850.

SIR : I was allowed to read and to make extracts from the report of the Attorney General on my case, and now respectfully beg leave to submit, in the accompanying paper, a few remarks in answer to some of the points presented, which I deem necessary to a full and distinct understanding of all the facts involved. They are printed in larger type, and have been submitted to the Secretary of War and Attorney General for their inspection.

I have the honor to be, with great respect, sir, your most obedient servant,

C. GRATIOT,

Colonel of Engineers and Brevet Brigadier General.

To the PRESIDENT of the United States.

THE CASE OF GENERAL GRATIOT.

"The particular and official history of this case will be found in Document No. 77, of the House of Representatives, 3d Session, 25th Congress ;"

Also in the records of the court before which General Gratiot was sued. (Book D.)

"It would be difficult to abridge it without hazard of some error or omission."

The statement (B) of General Gratiot presents a brief but accurate history of the case ; and, while it contains all the material facts stated in the "particular and official history" presented in Document No. 77, (C) referred to above, it clearly proves that error exists in many essential particulars of that history.

"And I would therefore refer to the Document at large,"

and for the same reason to the record also, (Book D.)

"With this general reference, for the correction of any omissions or mistakes I may make, I proceed to a brief statement of the more leading and material facts of the case.

"As early as 1825 differences existed between the accounting officers of the Treasury and General Gratiot, as to the correctness of some of his charges for extra services, and these, to some extent, were rejected. In a final settlement of his accounts, in March, 1831, by the Third Auditor, a balance was found against General Gratiot of \$8,958 91. This balance,

however, was the result, to some extent, of the disallowance of his claims for extra services. The above stated balance was reported to the Comptroller of the Treasury for the purpose of stopping General Gratiot's pay. In September, 1831, this stoppage was suspended by the Secretary of War. The balance, \$8,958 91, remaining unpaid, the order suspending his pay was renewed and carried into execution."

"Of further sums placed in his hands for public purposes in 1835, there remained in 1838 a balance of \$35,000. In March, and again in July, 1838, he was directed to pay over the money in his hands. He declined to do it."

"In 1838 the second comptroller also reported General Gratiot for having neglected, since the first quarter of 1837, to render his accounts quarter-yearly, &c., agreeably to the act of January 31, 1823."

"On the 25th November, 1838, General Gratiot, in reply to a requisition of the Secretary of War, for his reasons for not complying with the orders he had received to pay over the money in his hands, stated, in substance, that he had delayed returning these funds to the Treasury in consequence of the unsettled state of his accounts; that he had understood that his pay had been under stoppage; that, under these circumstances, he was unable to say what amount had to be refunded; that he requested his accounts might be made out in detail by the accounting officer, with his reasons for suspension of the several items, that the whole case might be laid before the President, and the balance appearing against him should be refunded to the Treasury; that the depositing the whole balance for Grand-JTerre, (\$35,000,) a large portion of which would have to be refunded to him immediately, on allowed claims, would not, he presumed, be insisted upon; that he had used a portion of it, considering it as his own."

The appropriation by Gratiot to his own use of a portion of the money in his hands for pay due him, seems to have been his great moral offending; the admission of the fact was honestly made, and he regrets it was not so received. In order, however, to know its wrong, the question was tested by asking an instruction which had a bearing on it. The Supreme Court answered, (15th Peters, page 370): "There is another instruction asked under this exception. * * * * The United States possess the general right to apply all sums due for such pay and emoluments to the extinguishment of any balances due to them by the defendant on any other account, whether due by him as a private individual or as chief engineer. It is but the exercise of the common right which belongs to every creditor, to apply the unappropriated moneys of his debtor in his hands, in the extinguishment of the debts due to him." The right was common to both, and so exercised by both.

"And that the raising of the whole of this large sum immediately would, to say nothing of the injustice of requiring it, at the present juncture, be ruinous; that he hoped that the President would be satisfied that nothing was further from his wish than to retain public funds for any other purpose than to secure what he considers his."

"On the next day after the receipt of this letter, that is, on the 27th November, 1838, the Secretary of War addressed a letter to the President informing him of the circumstances of the case, commenting severely on the conduct of General Gratiot, and recommending that he should be brought before a court-martial."

The Secretary of War has certainly made use of very severe and harsh terms in relation to General Gratiot's course in this controversy; and, unless the causes which elicited them be analyzed, the impression must maintain that they were deservedly applied. Gratiot had, for years, public moneys in his hands for public purposes. These were not all returned to the Treasury in 1838; and on receiving the orders of the Secretary of War to deposit the balance "into the Treasury," the answer was, that this would be done so soon as the accounts were legally settled. For so saying and doing, Gratiot had the authority of law on his side. The order was reiterated, and still the same answer was given; upon which the Secretary's letter of the 19th November, 1838, was written, and also Gratiot's, in answer, of the 20th November, 1838. (1.) On the receipt of this answer, the Secretary of War addressed his letter of the 27th November, 1838, (2)

which contains the severe comments on General Gratiot's course, to the President, who, thereupon, issued his order of the 28th November, 1838, requiring the payment of thirty-one thousand seven hundred and twelve dollars. (3.) This order was resisted, upon the ground that he had no legal right to make the demand before the balance was ascertained by the *accounting officers of the Treasury*, and not upon a settlement made by the Secretary of War on informal information, (2) no matter whence obtained, before any legal settlement of Gratiot's accounts were made by the accounting officers of the Treasury, and, therefore, before the true amount of his indebtedness could have been known. General Gratiot had legal rights, and would not submit to their being interfered with. The accounting officers of the Government and the judiciary, exclusively, have the authority to settle public accounts, and none other could be recognized by General Gratiot. The Secretary of War thought otherwise; and, as General Gratiot believed and still believes, wrongfully made the settlement himself. (Document No. 77, page 12.) (2.) In the interval between the date of the Secretary's letter to the President of the 27th November, 1838, and the one of the 3d December, 1838, (document, page 14,) reporting that General Gratiot had "not paid the amount, or any part of it," &c.: the Secretary omitted to say in this report, which he should have done, something of the propositions, "*that I could pay the balance due by me to the Government and resign; that I could pay the balance and be tried by a court-martial; that if I did not pay the balance I must be dismissed from the army,*" which he made to General Gratiot, through General Macomb, whose letter to Gratiot, of the — January, 1839, on the subject, is with the memorial to the President of the 9th April, 1849. Gratiot looked upon these propositions as a proffer to barter justice. *Money, or the utmost penalty tyranny can inflict, only, could satisfy the Secretary of War, and for its attainment, according to his own settlement,* he transcended his public functions by usurping those elsewhere delegated by law, and this, too, in disregard of Gratiot's right to insist that his accounts should be audited by the legally constituted authorities of the Government, as well as of his right to a final settlement by the courts, in case of disagreement after settlement by those authorities, under the provisions of the act of January 25, 1828. (5.)

"On the receipt of this letter, the President, on the 28th November, 1838, issued an order reciting that General Gratiot had been reported to him for not rendering his accounts according to law, and for retaining certain public funds in his hands, and directing General Gratiot 'to pay into the Treasury the sum of \$21,654, which he admits to be still in his hands, and against which he presents no claim, forthwith, and the remaining sum of \$10,058 in the course of thirty days.'"

In the aggregate, \$31,712. No balance of the kind appears in the Treasury transcript, but is found *only* in the settlement made by the Secretary of War, and is recorded in his letter to the President of the 27th November, 1838. (Document 77, page 12.) (2.) Nor does the Treasury transcripts brought in evidence, show any admission, such as the President adverts to, on my part. I made no such admission, but continued to request an official legal settlement, until which I could not possibly know what amount I was legally to refund.

"On the 3d December, 1838, the Secretary of War reported to the President that Gratiot had, in the years 1835 and 1836, drawn out of the Mechanics' Bank of New York the whole sum of fifty thousand dollars, which had been *there* deposited for carrying on the works at

Grande-Terre, and that fifteen thousand dollars thereof had been accounted for; and, moreover, that he had not paid the amount or any part of it, which the President has directed him ' forthwith ' to pay."

The Secretary seems to attach much importance to the bank transaction. The money placed in that bank, subject to General Gratiot's order, amounted to \$100,956 62. It was so placed by order of the President of the United States, to be applied to objects *such* as the exigencies of the country at that time might require, whether *those* for which appropriated by Congress or others. The history of this affair is explained in page 41 of the Congressional Document, No. 77. (6.)

"Thereupon the President, on the 4th December, 1838, issued the following order: General Gratiot having failed to pay into the Treasury the balance of the moneys placed in his hands in 1835, for public purposes, after suspending therefrom the amount which he claims to be due him on settlement of accounts, according to my order communicated to him by the Secretary of War, on the 28th November last."

The President runs into error as regards the reason here assigned: He did not authorize in his order of the "28th November last," (3) General Gratiot to suspend any part of the moneys in his hands.

And up to the date of the order in question, or since, there has been no official "*settlement of accounts*," showing a balance of *thirty-one thousand seven hundred and twelve dollars*. The Treasury transcripts brought in evidence pending the suit, are challenged for the proof. And more, the President had no jurisdiction over the alleged crimes, in the first branch of the order. They are offences punishable through the interposition of a court-martial, assembled under the authority of law, or by the operation of the requirements of the act of the 25th January, 1838, (5) "to prevent defalcations on the part of disbursing agents of the Government, and for other purposes." The provisions of the act 31st January, 1823, (7) upon which the President relied, does not reach either of these offences. The authority of General Gratiot has for so saying, is that of the Supreme Court, whose opinion on the powers of the President to annul the commission of an officer is fully expressed in the case of Marbury—(3d Story on the Constitution, p. 405-6 and 7, and §1547,) namely: "When a person appointed to any office refuses to accept that office, the successor is nominated in the place of the person who has declined to accept, and not in the place of the person who had been previously in office, and had created the original vacancy. It is therefore decidedly the opinion of the Court, that when a commission has been signed by the President, the appointment is made; and that the commission is complete when the seal of the United States has been affixed to it by the Secretary of (War) State. When an officer is removable at the will of the Executive, the circumstances which complete his appointment, are of no concern; because the act is at any time revocable, and the commission may be arrested if still in the office. But when the officer is not removable at the will of the Executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights, which cannot be resumed. The discretion of the Executive is to be exercised until the appointment has been made. But having once made the appointment, his power over the office is terminated in all cases, when by law the officer is not removable by him. The right of the office is then in the person appointed, and he has the absolute, unconditional power of accepting or rejecting it. (General Gratiot,) Mr. Marbury, then, since his

commission was signed by the President, and sealed by the Secretary of (War) State, was appointed; and the law creating the office gave the officer a right to hold (according to the rules and articles of war) for five years independent of the Executive; the appointment was not revocable but vested in the officer's legal rights which are protected by the laws of his country. To withhold his commission, therefore, is an act deemed by the Court not warranted by law, but violative of a vested right;" and,

Secondly, The opinion of Mr. Attorney General W. Wirt, who says in the case of Captain N. Hall: (Opinions of Attorney-Generals, p. 172.) "It is a clear principle, that the President has no powers except those which he derives from the Constitution and laws of the United States. If the powers in question, therefore, cannot be fairly deduced from these sources, it does not exist at all."

"By the Constitution, the President is made commander-in-chief of the army and navy of the United States. But in a government like ours, it would not be safe to draw from this provision inferential powers, by a forced analogy to other governments differently constituted. Let us draw from it, therefore, no other inference than that under the Constitution. The President is the national and proper depository of the final appellate power, in all judicial matters touching the police of the army; but let us not claim this power for him unless it has been communicated to him by some specific grant from Congress, the fountain of all law under the Constitution. By the 14th section of the act of the 16th March, 1802, fixing the military peace establishment of the United States, it is provided that "the officers, non-commissioned officers, musicians and privates of the said corps shall be governed by the rules and articles of war which have been established by the United States in Congress assembled, or by such rules and articles as may be hereafter established: *Provided*, nevertheless, that the sentence of general court-marshals extending to the loss of life, *the dismissal of a commissioned officer*, or which shall respect a general officer, shall, with the whole proceedings of such cases, respectively be laid before the President of the United States, who is hereby authorized to direct the same to be carried into execution, or otherwise as he may judge proper."

The offences charged against Gratiot in this (the first branch of the order) are, namely: "Disobedience of orders," and by implication, "*embezzlement*;" both grave military offences, punishable under the 9th and 39th articles of the "Rules and Articles of War." General Gratiot was not allowed the privilege to defend himself before a court composed of his peers, but on the condition that he should conform with the *proposal* made through General Macomb. The effect consequent on the President's action, as expressed in the order, has been to present Gratiot to the country as guilty of the crimes alleged, *thereby doing him great injury, both as regards character and the happiness of his family.*

"And having neglected to render his accounts in obedience to the law of January 31, 1823, the said General Charles Gratiot is hereby dismissed from the service of the United States."

The President was also induced to *error* in this, as he was in regard to the preceding, is manifest, viz: Document No. 77 declares, at its opening, (8) that it contains all the papers (1 to 40) which relate to the defalcation of General Gratiot; it follows, then, that they *ought* to furnish all the facts.

The Secretary says (page 10,) "Agreeably to your instructions, to present to you the facts in the case of General Gratiot, which has been reported to you, *both for not rendering his accounts according to law, and for retaining certain public funds in his hands, I have the honor to report.*" According to the Secretary, "not rendering accounts" is one offence; and the "retaining certain public funds" was another offence, altogether separate and distinct from the first. The President so regards them in his orders of the 28th November and 4th December, 1838. (Document, page 14.) The Secretary fails to say when this Report "for not rendering accounts" was made, but on turning over the leaves of the Document at page 17, (9) a letter from the Second Comptroller is found, in which he states, on the 5th January, 1839—one month after the date of the order of dismissal—"that on the 22d October last, General Gratiot having neglected to account for the expenditures of the thirty-five thousand dollars, was reported to the Secretaries of War and of the Treasury as having failed to render his account according to law." "That as all disbursing officers are, by law, required to render their accounts to the Auditors of the Treasury, the correspondence with General Gratiot relative to the settlement of his accounts, so far as appertains to the accounting officers, will be found with the Third Auditor." In page 9, (No. 10) of the same document, Fowler says, *that the accounts of Gratiot were rendered in the office of the Chief Engineer to include the second quarter of 1838, or 30th June of that year; and in page 35, the Third Auditor confirms that they were so rendered.* (11.) Such are the facts touching this matter. These accounts being rendered to include the 30th June, 1838, and as the report of the Second Comptroller was of the 22d October following, it now remains to be seen, whether he (the Second Comptroller) had jurisdiction over the subject, upon that day. The second section of the act of January 31, 1823, says, accounts are to be rendered to the proper accounting officers of the Treasury with the vouchers necessary to the correct and prompt settlement thereof, "*within three months at least after the expiration of each successive quarter.*" (7.) Gratiot's accounts for the second quarter of 1838 being rendered, those for the third (July, August and September,) were to be "rendered" on or before the expiration of the fourth, ending on the 31st December; consequently, the jurisdiction of the Second Comptroller, under the law, was not opened on the "22d of October, 1838;" that is, two months and nine days before he could be qualified to make the report in question. As regards the usage of rendering accounts and the manner of accounting, when no disbursements were made, reference is made to the last page of the printed statement, (5;) to Fowler's certificate, (page 9 of the document,) (5,) and to the books of the Engineer Department, which also show that *the same usage and practice still maintains.* According to that practice and interpretation of the law, *Gratiot did not fail to render his accounts "in obedience to the law of January 31, 1823."* (7.)

"This order was immediately carried into execution, and General Gratiot has been, ever since, treated and regarded by the Government, as out of service."

"Shortly after his dismission, a suit was instituted against him by the United States, for the recovery of the public money alleged to be in his hands."

The question here arises, whether the reference to the judicial proceedings is not travelling out of the record? General Gratiot complains that

his dismissal was made to precede anything like an official and legal settlement of his accounts, by which the true balance could be ascertained. He was arbitrarily commanded to pay "into the treasury" a sum of money, which the after *treasury* settlement proved he did not owe. In proof of this assertion, he challenges the record, (Book D.) The President punished by dismissal, because he refused to pay \$31,712, when in point of fact, his indebtedness was a little over \$23,000.

"On the first trial, a verdict and judgment were rendered against him for \$31,056 93, besides costs."

The amount for the recovery of which suit was instituted, was \$29,292 13, (records of first trial, page 56,) (14)—and not \$31,712, as claimed by the President on the settlement of the Secretary of War, (Document 77, page 12,) (2.)

"Upon a writ of error to the supreme court, that judgment was reversed and the case remanded back for a new trial, which was had, and resulted in another verdict and judgment in favor of the United States, for the sum of \$29,126 93, which judgment on another writ of error by General Gratiot was affirmed by the supreme court, at its January term of 1846.

"Throughout the controversy, both before and since his dismissal, General Gratiot has insisted, as offset, upon large claims due him from the Government, and has alleged that as his reason and justification for withholding the public money in his hands."

As regards these claims, the supreme court says (15 Peters, page 371)—That, "to sustain the refusal of the court in the present case, it is therefore indispensable to show that there is some law which positively prohibits, or by just implication denies any allowance of the disputed items or any part thereof. We know no law which has such an effect, or which contains any such prohibition or denial. * * * But assuming the President possessed the fullest power, under this enactment, from time to time to employ any officer of the corps in the business of civil engineering, still it must be obvious that their pay and emoluments were, or would be regulated with reference to their ordinary military and other duties, the power of the President to detach them upon other civil services, would not preclude him from contracting to allow such detached officer a proper compensation for any extra services. Such a contract may not only be established by proof of some regulation, but may be inferred from the known practice and usage of the War Department in similar cases, acting in obedience to the presumed orders of the President. Now it is perfectly consistent with the record in this case, that the defendant might have offered direct or presumptive evidence of such contract, either *express* or *implied from the practice and usage* of the War Department, applicable to the very services stated in some, at least, of the disallowed items. We do not say that he could, in point of fact, have established any such contract, or any legal or equitable right to such allowances. That is a point on which we have no right to pass judgment, since he was stopped from offering any proof whatsoever at the very threshold of the inquiry. In short, unless some law could be shown establishing clearly and unequivocally the illegality of each of these items; which as we have said, has not been shown; the refusal of the court to admit the evidence cannot be supported; and we are, therefore, of opinion that this exception was well taken; and that there was error in the refusal of the circuit court."

The record of the second trial and the Congressional documents bound with it show, in great detail, the usage of the Government, particularly

that of the War Department, in reference to extra allowances. These show that an implied contract, under this usage, seemed to be established between the Government and Gratiot; but aside from these, Gratiot would have adduced *an expressed one* had it not been for the loss, by the accounting officers of the Treasury, of his pay account for March, 1829, (13.) On it the Secretary of War had written, over his signature, "*allowed, exclusively for the military services,*" or words to the same effect; therefore, the brevet pay, &c., charged in the account, did not include compensation for those of a civil nature. Both the Second Auditor and the then Secretary of War testify, that the said lost or mislaid account had on its face the written approval of the Secretary of War; otherwise, it would not have passed to the credit of the pay-master, (Record, second trial, pages 77, 80, and 105,) (15.) The United States were the *custodians* of that paper and its duplicate, lacking the written action of the Secretary of War on its face; unless destroyed by design, it is still on the files of one of the Auditors. Its loss, General Gratiot firmly believes was the main cause of the final issue of the suit brought against him. Mr. Justice McLean dissented in the opinion given by his brethren, affirming the judgment of the circuit court. (Fourth Howard.)

"He now contends that the order dismissing him was illegal and void on the grounds chiefly, that the facts recited in the order did not exist, and that the President was therein mistaken; and further, that he was not such disbursing officer as the President was authorized by the act of January 31, 1823, to dismiss."

"To sustain these grounds and vindicate the course of General Gratiot, a printed and written argument will be found among the papers filed in the case, and here referred to for more particular examination."

The printed paper here adverted to, is an index or brief statement of the main facts involved, contained in the Congressional document No. 77, (5); and the records of the circuit court for the two trials. The others are written arguments and letters explanatory of certain facts which may, incidentally, have to be looked into. The mass of papers, as presented, are voluminous, but by separating those which ought to be first examined, in view to a proper understanding of the case, it will be found that they are limited; first, to my letter to the President of the 9th April, 1849; the Congressional document No. 77. Third, the records of the court and two Congressional documents bound in one volume; General Macomb's letter, and the printed statement to be used as a directory to ascertain where to look for the main facts.

"Upon the whole matter, the application of General Gratiot is to have the order of President Van Buren declared null or set aside, and to be restored to his office."

"The consideration of his case seems to present three principal questions, namely :

"1st. Is it competent for the President to annul, or declare as null and void, *ab-initio* the act and order of his predecessor in dismissing General Gratiot ?

"2d. If the order be not null and void, *ab-initio*, is it competent for the President now to set it aside, and restore General Gratiot to his commission and rank in the army ?

"3d. Is it expedient and proper, under the circumstances of this case, to set aside his dismissal and restore General Gratiot, if it be in the power and discretion of the President so to do ?"

"As reflecting some light on the subject, I refer to the only authorities to which my attention has been turned in the hurried examination which I have been obliged to make. These authorities are to be found in the opinions delivered by the Supreme Court, in the case of the 'Bank of the Metropolis *vs.* the United States,'—15 Peters 400-1. In the opinion of the late distinguished Attorney General Wirt, in the case of Sutterlee Clark; and in a letter of the Secretary of War, Mr. J. C. Spencer, to President Tyler, dated October 18, 1841, and an order of Mr. Tyler thereon."

"In the case in Peters, the Supreme Court, says : (400-1)—The third instruction asked, the court say, among other things, if credits given by Mr. Barry were for extra allowances, which the said Postmaster-General was not legally authorized to allow, then it was the duty

of the present Postmaster-General to disallow such items of credit. The successor of Mr. Barry had the same power, and no more, than the predecessor; and the power did not extend to the recall of credits or allowances made by Mr. Barry, if he acted within the scope of official authority given by law to the head of the Department. This right, in an incumbent, of reviewing a predecessor's decisions to mistakes in matters of fact arising from errors in calculation, and to cases of rejected claims, in which material testimony is afterwards discovered and produced. But if a credit has been given, or an allowance made, as these were, by the head of the Department; and it is alleged to be an illegal allowance, the judicial tribunals of the country must be resorted to, to construe the law under which the allowance was made, and to settle the rights between the United States and the party to whom credit was given; it is no longer a case between the correctness of one officer's judgment and that of his successor. A third party is interested, and he cannot be deprived of a payment on a credit so given, but by the intervention of a court to pass upon his right. No statute is necessary to authorize the United States to sue in such cases. The right to sue is independent of statute, and it may be done by the direction of the incumbent of the Department."

The case cited (Peters, 400-1) does not oppose, but favor the application of Gratiot. It may be asserted that here, as in England, there is no executive interregnum, and that the legal powers of the President always remain to do what is right, and to avoid all that is wrong, no matter who the incumbent of the office may be. If one President may not repair the wrongs of a preceding one, so also may the cabinet minister or the comptroller refuse to look into the errors of predecessors, and thus manifest injustice may result. If an individual be condemned, and a pardon refused by the incumbent at the time, the same reason would go to the conclusion that a subsequent President would be precluded from interfering; and no matter how unjust the condemnation might be, mercy interposing would sue in vain.

The authority referred to, says: "If credit (decisions) given by Major Barry was for *extra* allowances which he, the said Postmaster General, *was not legally authorized to allow*, then it was the *duty of the present* Postmaster General to disallow such items of credit." (15th Peters, 401.)

The quotation shows that a present incumbent could refuse to *credit*, which the predecessor "*was not authorized to allow*," thereby showing that an act *illegally done*, is always open to correction.

So in the case of General Gratiot, it is insisted that under the reason of this decision, an incumbent President may refuse to execute or set aside a judgment or decision which a previous President "*was not authorized to (make) allow*," the principle being the same.

Nor has the case referred to, of Cox, Clarke, and Corcoran and Riggs, any bearing adverse to General Gratiot's application. All that Mr. Secretary Spencer decided in that case was—

That as the law gave to the accounting officers to adjudicate in this case, the power of deciding being alone given to them, the President could not interfere, to control an adjudication judicially confided to others—not to him.

Mr. Spencer surely did not intend the chimerical and broad assertion, that the President, in the exercise of responsible power, sworn to see the laws faithfully executed, could exercise no interference to control the accounting officers; for, if he could do nothing more, he at least could remove them, and thus obtain indirectly a decision through others, who would adopt a more rightful course. It is a doctrine which, if assented to, would place these accounting gentlemen rather ahead of the President.

What if Congress should direct a claim to be adjusted and paid "*by the proper accounting officers*," and they refuse, or interpose frivolous objections? If the President, satisfied of their error, may not correct it, what

becomes of the chief magistrate's oath "*that the laws shall be faithfully executed?*"

This idea is of modern origin; for it is against our notions of government that one or two subalterns shall control the rights of others, and at their mere will and pleasure paralyze the interference of the President.

Grant, however, all that is asserted by Mr. Spencer, and it fails to meet the present case. Surely the comptroller's action may be called in question, as to any matter asserted to be a fact, and which, on examination, is ascertained not to be founded in truth.

In his report made to President Van Buren, the comptroller says: General Gratiot, "*having neglected to account for the expenditure of the thirty-five thousand dollars, was reported to the Secretary of War and of the Treasury, as having failed to render his accounts according to law.*" (Document No. 77, page 17.) (9.) It was not true, because, legally, until the termination of the quarter, the 31st December, 1838, following the dismissal, he could not make such report, or know that he was indebted; and if he could then, General Gratiot, under such state of things, was only liable to have his pay, &c. arrested, until the asserted balance was reimbursed, (Document No. 77, page 16, bottom lines,) "*and General Gratiot continued to receive the pay and emoluments of his office until April 1, 1836, when the stoppage was renewed and continued up to December 6, 1838, the day of his removal from office.*" (Letter of the second comptroller, of January 5, 1839, Document No. 77, page 16 and 17.) (9.)

President Van Buren, in his order of dismissal, of the 4th December, 1838, says General Gratiot had been reported to him:—

First, "For having failed to pay into the Treasury the balance of the moneys placed in his hands in 1835."

Second, "And having neglected to render his accounts in obedience to the law of January 31, 1823." (4.)

It has been shown that the first charge, "for having failed to pay into the Treasury," &c., could not, at the time, be true, because, until the end of the quarter, 31st December, 1838, (7) such fact could not be legally known, or if known, did not authorize a dismissal, inasmuch as the report being prematurely and falsely made, did not bring him under the penalties of the act of 1823; and, even if it were true, the words of the statute of January 25, 1828, (5) the only one which applied to such a case, authorized nothing more than a *detention* of his pay until the amount should be reimbursed—not a dismissal from the public service.

The other ground asserted is, "For having neglected to render his accounts in obedience to the law." This is without foundation, and is so proven by the testimony of Mr. Fowler, (Document 77, page 9,) (10) a clerk in the Engineer Department, and also by the records on which the comptroller undertook to act; and, being untrue, President Van Buren, of course, had no jurisdiction over the matter, whereby to bring the terms of the act of 1823 to operate on the case; hence his act of dismissal was void.

It may be argued that, as the comptroller's report to the President asserted that the accounts were not returned agreeably to law, (and that this, legally, was his duty,) that upon the report, the jurisdiction and right of the President to dismiss did attach; and it is for this purpose only, it is presumed, that the case of Coxe, Clark, and Corcoran and Riggs is referred to. But such does not comport either with law, equity or justice.

The interpretation of a court of chancery is invoked, under a bill setting forth that the complaint is merely purely equitable. Yet, in the progress of it, and proof adduced, if it appear that it is not matter of equity, it will be dismissed for want of jurisdiction; and, should a decree be entered, an after court, though made up of *different judges*, would re-examine, and correct the error: and can it be that the President, the fountain of all constitutional authority, and obliged to see that the laws are fully and faithfully executed, shall possess a less power, and omit to redress wrongs which some predecessor had caused to be perpetrated? If this be so, then every four years makes a *bar*—a *rest* in our Government; and acts, no matter how oppressive, can find no redress, after he who has practised the wrong has retired from his political position. A doctrine of this kind would materially impair the rights of the citizen and subvert justice. (a.)

The comptroller, hostile to any one who was a disbursing officer, might incorrectly report him as in failing to return his accounts and vouchers, even as in General Gratiot's case, before the time when, legally, they ought to be returned; and if on distant service, and ignorant of the dismissal, and the President should retire from office, what would be the remedy, where the redress, if the succeeding President should hold to this new and strange doctrine, that the report of the comptroller and action of the previous President upon it, forbid all interference? It would be making the accounting officers arbiters of the honor and safety of all military disbursing officers or agents.

Apart from all abstractions, this whole question lies in a narrow scope. Had President Van Buren jurisdiction of this case? If he had not, his act of dismissal is void; for where a specified authority is given, every requirement must be shown truly to exist, before the jurisdiction can legally attach.

The exercise of it (jurisdiction) he has placed on the terms of the act of January 31, 1823, (7) and it now can be referred to nothing else to sanction its correctness. The dismissal was,

First, "For having failed to pay into the Treasury the balance of the moneys placed in his hands in 1835." For this, his punishment, *solely*, was under the act of 1828, (5) a sequestration of pay until the debt was discharged: at first, and up to the time of dismissal, this course was pursued, (Document 77, page 16, last lines,) (9;) *and thus was he punished under both laws—twice for the same offence, in violation of the constitution.*

Second, "For having neglected to render his accounts in obedience to the law of January 31, 1823." (7.) That is untrue. They are shown to have been "*rendered*," both by oral and recorded proof, (10, 11;) and this being the case, President Van Buren had no jurisdiction of the matter—*his act was void.*

The case of Satterlee Clark (Opinions of the Attorney-Generals, pages 590–1–2–3) has been answered by Mr. J. H. Eaton, and is filed with the other papers in this case. It seems to have no bearing on the case.

Finally, Apart from the facts and arguments in the case, showing the wrongs and injustice already heaped upon him, he now thinks himself warranted, from the closing remarks of the Attorney-General, to throw himself, not merely upon the long services rendered by him to his Government, but also, upon those rendered by his father—the descendant of a persecuted and exiled Huguenot—who, during our revolutionary struggle, "in the

years 1778-'79, furnished the expedition commanded by General George Rogers Clark, whilst in this country, with articles of indispensable necessity, consisting of provisions, clothing, ammunition, and other military stores, to an amount exceeding his estate, without which that expedition would, in all probability, have failed. The conquest of that portion of "the Illinois" east of the Mississippi would have been prevented, or postponed to a very distant day; for which neither that individual nor any of his family have, to this day, received from our country, scarcely any return. This occurred during the darkest period of our revolutionary struggles; at a time when our treasury was exhausted, and our credit reduced to the lowest ebb. He, like the gallant and immortalized Lafayette, in rendering the services and affording this aid, was actuated, in this evidence of friendship for our country, by the purest and most disinterested motives." (Extract from a printed speech of Colonel J. O'Fallon, one of General Clark's nephews.) The services here spoken of by Colonel O., appear to have been duly appreciated by the commonwealth of Virginia; since, as it is seen, in the proceedings of the House of Delegates, in page 81 of the Journal for 1783, that he (Gratiot) was placed, by resolution of the 22d December of that year, in the category of preferred creditors named and specially provided for in the act referred to in the resolution, namely: "Contingent charges of government; salaries of officers of the civil government, and members representing the commonwealth in Congress; pensions to wounded officers and soldiers; warrants for payment of money lent to the public on the requisition of the General Assembly, or of Thomas Jefferson, Esq., then Governor of Virginia," &c.—(Hening's Statutes at Large, 1782 and 1784, No. 2.)

All of which is respectfully submitted.

C. GRATIOT.

WASHINGTON, *October 31, 1850.*

The PRESIDENT of the United States.

(a) President Tyler, on an appeal to him, set aside the decision of a former administration, in the case of Major R. B. Lee, namely:

The question in this case, was Major Lee on duty or had he a command according to his rank?

"Rules for the Secretary of War."

1. "Hereafter the Secretary of War will not reconsider cases brought before him for his action, which shall have been previously decided by himself or his predecessors; unless in the application for such reconsideration it is distinctly and briefly stated, that material facts or evidence which changes entirely the former character of the case is adduced and which was not before the Department when the case was decided, or other peculiar circumstances."

2. "The Secretary will act upon no case of any description that is or may be likewise acted upon by the accounting officers, and which depends upon the construction or applicability of a construction already given by law; the Second Comptroller being the proper officer to give the construction in the one case and to apply it."

The rule within stated is of no obligatory force. It is against reason and right to say, because a Secretary has decided a case, however erro-

neously, it shall never be revised. We should be careful how we interfere with a decision of another administration, but we should sanctify our own errors merely, if the administrative officers had not authority to correct them, within which they are committed.

Major Lee's case was decided against him by Mr. Spencer. The subject has again been referred by the Secretary of War to the commanding general of the army. He has expounded many of the points in favor of Major Lee. I concur with General Scott, whose opinion is sustained by decisions involving the same points presented by Major Lee's case. *The fact that justice has been delayed for eight years only* calls the stronger for prompt action. My opinion is, that the claim is just and ought to be allowed within the period mentioned by General Scott.

JOHN TYLER.

November 18, 1844.

The review of this opinion by General Gratiot appears to assume that the only power which the President had to remove him from office, was derived from the statute, and consequently could not be legally and constitutionally exercised until the case contemplated by the statute had actually arisen; but it appears to me that the right of removal is a power vested by the Constitution. True, it is not granted in express terms, but it has been held to result by construction in all civil offices except judges; and though it is seldom exerted, yet there is no difference made by the Constitution between a civil and a military office, and I am of opinion that the power is the same in both. It is, therefore, immaterial in determining the validity of the act, what the motive was for exercising the power. It may have been good or bad, right or wrong, but the act itself was constitutional and perfect, and nothing can restore him but the appointing power, re-exerted in his favor, and this power consists not of the President alone, but of the President and Senate.

MILLARD FILLMORE.

December 6, 1850.

B.

A brief statement of the circumstances which led to the dismissal from the army, of Brevet Brigadier General Charles Gratiot, Chief Engineer, without trial, by President Van Buren, in 1838; showing the injustice and illegality of the act.

On the 19th of July, 1838, the Secretary of War referred to General Gratiot a report from the Third Auditor of the Treasury to him, presenting a statement of General Gratiot's account as it stood on the books of the auditor. Upon this report was the following endorsement, viz:—"The Secretary suggests the propriety of transferring the first item of this statement (\$35,000) for the fort of Grande-Terre, or whatever balance of that appropriation may remain in hand, to some other work in progress: as neither the wants of the Treasury, nor the regulations lately adopted, permit its remaining in its present state."

Shortly afterwards, and before the above suggestion was replied to, the Secretary of War left the seat of Government for the springs in Virginia. In September following, the acting Secretary of War informed General Gratiot of the contents of a letter he had received from the Secretary of War, dated Salt Sulphur Springs, August 31st, 1838, on the same subject, and requested such information in reference to the auditor's report, and the suggestion endorsed thereon, as would enable him to answer the Secretary's letter. To this request General Gratiot replied, verbally, that the Government was indebted to him in a considerable amount on a current

account of many years standing; that items charged in his accounts for which he believed himself legally and justly entitled to credit, had been disallowed or suspended; that his pay had been stopped in consequence of these disallowances and suspensions; and that he desired to hold the money with which he was charged till a final *legal* settlement of his accounts could be obtained.

On the 17th of October, 1838, the Secretary of War addressed a letter to General Gratiot, referring generally to the above, and requiring that his reasons for not complying with his suggestion should be given in writing. (See House document 77, 25th Congress, 3d session, page 3.) To this letter the following reply was made.—(See House document 77, 25th Congress, 3d session, page 5.)

ENGINEER DEPARTMENT,
Washington, November 26, 1838.

“SIR: In compliance with your instructions, under date of October 17th, to submit in writing my reasons for retaining in my hands the unexpended balance of funds for the fort at Grande-Terre, I have the honor to state that I have delayed returning these funds to the Treasury in consequence of the unsettled state of my former accounts, by which the true balance to be refunded is not ascertained; that the manner these were audited is yet unknown to me; but I have understood (not officially) that I have been under stoppage of pay since April, 1836. Under these circumstances, unable to say what amount had to be refunded, I have postponed making the deposit required under the regulation of March 2d, 1838.

“As the President has now determined that this money can no longer be thus retained, I have to request that my account may be made out in detail by the accounting officer, with his reasons for the suspension of the several items, in order that the whole case may be laid before the President, when the balance that shall appear against me will be refunded to the Treasury. The depositing of the whole amount of the balance for Grande Terre, a large portion of which would have to be immediately refunded to me on allowed claims, will not, I presume, be insisted upon; a portion of it I have used, considering it as my own property; and the raising of the whole of this large sum immediately, would, to say nothing of the injustice of requiring it, at the present juncture be ruinous.

“The above statement will, I trust, prove satisfactory to the President, and convince him that nothing could be further from my wish than to retain in my hands public funds for any other purpose than to secure what I consider a just claim on the Government.

I am, sir, very respectfully, &c.

C. GRATIOT.”

“Hon. J. R. POINSETT,
Secretary of War, Washington.”

On the 27th November, 1838, the Secretary of War made a report to the President of the state of General Gratiot's account (see House document, No. 77, 25th Congress, 3d session, page 10) as presented by the accounting officers of the Treasury, and as understood by himself, and the President thereupon issued the following order, viz:—(See House document, No. 77, 25th Congress, 3d session, page 13.)

“WASHINGTON, *November 28, 1838.*

“The President has carefully considered the communication of the Secretary of War in the case of General Gratiot, who has been reported to him for not rendering his accounts according to law, and for retaining certain public funds in his hands.

“He concurs fully in the opinion, that the retention, and more especially the application to his own use, by a public officer, of moneys drawn from the Treasury for the public service, and so retained to satisfy alleged claims upon the Government which have been rejected by the regular accounting officer of the Treasury as not authorized by law, is an abuse of trust, which if countenanced by the Executive, would subvert the most salutary portions of the existing enactments for the security of the public moneys. The Secretary of War will therefore direct General Gratiot to pay into the Treasury the sum of \$21,654, which he admits to be still in his hands, and against which he presents no claim, forthwith; and the remaining sum of \$10,058 in the course of thirty days. A decision of the question in relation to the sufficiency of General Gratiot's reasons for not rendering his accounts according to law, will be deferred until an opportunity is afforded General Gratiot to comply with the directions to be given to him in respect to the re-payment of the public funds in his possession.

“The Secretary of War will cause General Gratiot to be furnished with a copy of this order and of his report.

“M. VAN BUREN.”

This order was demurred to for the following reasons:

1st. Because it demanded the unconditional payment of money which General Gratiot had all along contended he did not owe.

2d. Because the payment would have been a virtual recognition of indebtedness to the amount demanded, and would have left no recourse for the recovery of the amount for which a credit was claimed, while, on the other hand, the Government could at any time cause the legality and justice of that claim to be judicially determined; and,

3d. Because the order was oppressive and believed to be illegal.

On the 3d of December, 1838, the Secretary of War reported to the President that his order of the 28th of November had not been complied with, and the President thereupon issued the following order, viz:

(See House document No. 77, 25th Congress, 3d session, page 14.)

“WASHINGTON, *December 4, 1838.*

“General Gratiot having failed to pay into the treasury the balance of the moneys placed in his hands in 1835, for public purposes, after suspending therefrom the amount which he claims to be due him on settlement of accounts, according to my order, communicated to him by the Secretary of War on the 28th of November last; and having neglected to render his accounts in obedience to the law of January 31, 1823, the said General Charles Gratiot is hereby dismissed from the service of the United States.

“M. VAN BUREN.”

In the order just quoted it will be seen that the President assigns *two* distinct reasons for dismissing General Gratiot from the service of the

United States. Both reasons are wrong in point of fact, as will now be shown.

The first and principal reason is, "having failed to pay into the Treasury the balance of the money placed in his hands in 1835, for public purposes, *after suspending therefrom the amount which he claims to be due him on settlement of accounts, according to my order, communicated to him by the Secretary of War on the 28th of November last.*"

Now, the order of the 28th of November *did not* require him to pay into the Treasury the balance "after suspending therefrom the amount which he claimed to be due him on settlement of accounts," but a specific sum, to wit, \$31,712—a balance which the Secretary of War assumed to be due from him, and so reported to the President. General Gratiot had repeatedly stated his readiness and willingness to pay into the Treasury whatever balance might be found due from him on final settlement of his accounts, and could not, therefore, have refused to pay such balance if permitted to designate it himself, or, as the President states, to "suspend" from the charges against him the amount which he claimed to be due to him.

The second reason assigned for the dismissal is "having neglected to render his accounts in obedience to the law of January 31, 1823."

That there was no such neglect on General Gratiot's part, is manifest from the following statement of Benjamin Fowler, chief clerk of the Engineer Department, which had been laid before the Secretary of War on the 20th of November, 1838, viz :

(See House document No. 77, 25th Congress, 3d session, page 9.)

"The subscriber, principal clerk in the office of the Chief Engineer, among other duties, is charged with that of transmitting the accounts of disbursing agents to the office of the Third Auditor of the Treasury, after they have received the examination required by the regulations ; he also prepares the quarterly statements of disbursing agents, called for by the Third Auditor, in which are shown the names of agents whose accounts for the quarter have been received, and transmitted to the Auditor ; those whose accounts have been received, but for want of time to give them the required examination, remain in the office ; and of those who have failed to render accounts for the period stated, noting, whenever so advised by the agents, or positively known to the Department, that no disbursements had been made within the quarter. This has been the practice for a considerable time back, and he has never understood otherwise but that it was perfectly satisfactory. In the particular case of General Gratiot, the statement furnished to the Third Auditor of the agents having to render accounts for the fourth quarter of 1837, it is written opposite his name—'*Received and in the office of the Chief Engineer ;*' for the first quarter of this year it is stated, '*Accounts in the Engineer Department ;*' and for the second quarter, '*No Disbursements.*' As these explanations were not objected to as insufficient by the accounting officers, so far as I am advised, the strict conformity with the requirements of law has been lost sight of ; and if any blame is to attach for this it must be to myself, whose duty it was to see that the accounts current were sent to the Auditor, whether disbursements were made or not.

BENJAMIN FOWLER,

Clerk in the office of the Chief Engineer.

November 20, 1838."

It is thus shown, conclusively, that General Gratiot neither failed "to pay into the Treasury" that balance imputed, the refusal to do which was the first reason; nor "neglected to render his accounts," which supposed neglect—acknowledged, if real, to be another's—was the second reason for his dismissal.—In other words, it is shown that he was dismissed for delinquencies imputed to him, and of which he was not guilty.

The President's order of dismissal was communicated to General Gratiot by the late Major-General Alexander Macomb, and has never been published in General Orders.

It is contended that the action of the President was not conformable to law, nor to the rights of General Gratiot, and that the power to dismiss an officer of the army on mere allegation of crime is not left to his discretion, but to the examination of a court-martial, whose finding and sentence he (the President) may approve or not according to law and facts.—(See Dehart's Courts-Martial, from page 235 to page 243.

That these premises are correct, so far as regards the settlement of public accounts, is manifest from the provisions of the act of Congress of January 25, 1828, entitled "An act to prevent defalcation on the part of disbursing agents," &c. The first section of which is as follows:

Be it enacted, &c., "That no money hereafter appropriated shall be paid to any person, for his compensation, who is in arrears to the United States, until such person shall have accounted for, and paid into the Treasury, all sums for which he may be liable; *Provided*, That nothing herein contained shall be construed to extend to balances arising solely from the depreciation of Treasury notes received by such person to be expended in the public service; but in all cases where the pay or salary of any person is withheld in pursuance of this act, it shall be the duty of the accounting officers, if demanded by the party, his agent or attorney, to report, forthwith, to the agent of the Treasury Department, the balance due; and it shall be the duty of the said agent, within sixty days thereafter, to order suit to be commenced against such delinquent and his sureties."

No authority is here, nor in any other enactment, given to demand assent to the balance found by the accounting officers of the Treasury, but it is left with the alleged delinquent to demand a judicial investigation, which it is made the duty of the Treasury agent to commence within sixty days thereafter—certainly there is nothing in this act, nor in any other, which authorized the summary proceedings in General Gratiot's case, particularly as his account had ultimately to be judicially settled.

The inference must be that when the President required the payment into the Treasury of a specific sum of money, he did so from representations and belief that it was a balance due on a *legally settled* account which was not susceptible of alteration; or, in other words, that the balance claimed was an ascertained one which could not be increased or diminished on a final settlement. In this case such was not the fact, as the record of the circuit court of the United States for the Missouri district, in which General Gratiot was finally sued, will show.

The Treasury transcript, brought in evidence against General Gratiot on the trials of this suit, may be referred to for dates, amounts, &c., of settlements made of his accounts by the accounting officers of the treasury.

These settlements will prove that the President *was not* correctly informed in regard to his accounts.

It appears from the record of proceedings of the court, on the first trial, pages 42 and 43, that on an official settlement by the accounting officers of the treasury on the 16th of January, 1837, a balance of \$43,958 91 was claimed for the United States.

In the record of the court, on the second and final trial of this case, it is shown at pages 76 and 92 that the Paymaster-General of the Army, and the Second Auditor of the Treasury, both testify that General Gratiot's pay was stopped from the 31st of March, 1836. The settlement just referred to contains no credit for the amount of pay, &c., stopped between the 31st of March, 1836, and its date (16th January, 1837,) as it clearly should have done. The omission of this credit, amounting to upwards of \$3,500, proves the settlement to be erroneous and its showing unjust towards General Gratiot.

On the 27th of November, 1838—more than ten months after the settlement—the Secretary of War assumed the above balance to be *the true amount* due. He, however, admitted a credit of \$12,246 for pay, &c., stopped from General Gratiot to that date, and thus reduced the claim of the United States to \$31,712, which amount he reported to the President. General Gratiot had failed to account for.—(See his letter to the President in House document No. 77, third session of 25th Congress, page 10.)

The President, assuming this latter sum to be a balance due from General Gratiot, against which he was not entitled to further credit, demanded payment of the whole sum.—See his order of the 28th of November, 1838, quoted above.

The next official Treasury settlement was on the 17th of December, 1838—thirteen days after General Gratiot was dismissed. It is found in the record of first trial, at pages 44 and 45.

In this settlement the balance of \$43,958 91 claimed in the preceding settlement of 16th of January, 1837, is charged, and a credit of \$12,284 46 is given for pay, &c., stopped; so that the balance resulting from, and claimed on this settlement, is \$31,674 45.

On the 30th January, 1839—fifty-seven days after General Gratiot was dismissed—another and final official settlement was made. This settlement may be found in record of first trial, at pages 50 and 51. In it the balance found in the last preceding settlement (\$31,674 45) is charged, and a credit is given for \$1,769 59, "*for sundry disbursements made by him at Fort Monroe in 1825, 1826, and 1827,*" which amount consisted of some of the items in General Gratiot's accounts which had been unjustly disallowed—as their being now credited admits—and for which, and other similar credits, he had for years contended in vain. The balance resulting from this settlement is \$29,292 13, for which amount General Gratiot was sued.

After the suit was brought, a further credit of \$6,034 was admitted *for disbursements made at Fort Monroe prior to 30th September, 1829.*—(See record second trial, page 109.) This amount also consists of items which had been unjustly disallowed, and for which, as for the preceding, credit had been several years contended for in vain.

A voucher which was essential to the establishment of an important item in my claim, and which would have more than absorbed the whole claim of the United States against me, could not be produced in evidence, for the reason *that it had been taken from the files of the Second Auditor's Office!*—(See deposition of Second Auditor, in record of second trial, at pages 77

and 80.) That voucher was submitted to the Secretary of War, who endorsed on it a declaration to the effect that the brevet pay claimed by it was in consideration of military service, and did not include compensation for any services of a civil character. The copy produced in evidence against General Gratiot purporting to be "a true copy," could not have been so, because it lacked the Secretary of War's endorsement, which was made only on the voucher sent to the Auditor for settlement, and not on the duplicate retained by the paymaster from which the "*true copy*" was made.—(See deposition of Second Auditor in the record of second trial, at page 80.)

The plaintiff (the United States) was the *custodian* of this paper, and all the efforts of General Gratiot to cause it to be produced were unavailing; negligence in losing it deprived General Gratiot of the evidence relied on to sustain the validity of the important item referred to, and it is confidently believed that the want of the evidence the lost paper would have afforded, and the effect of the copy produced in evidence against General Gratiot, caused the final judgment against him.

From the foregoing, the following facts are believed to be conclusively established :

1st. That General Gratiot was ordered on the 28th of November, 1838, to pay into the treasury a balance, claimed to be due from him to the United States, of \$31,712.

2d. That before suit was brought against him, viz: on the 30th of January, 1839, this claim was reduced, by admitting some of the credits for which he had contended for years prior to the 28th of November, 1838, to \$29,292 13.

3d. That after suit was brought another portion of this claim, amounting to \$6,034, (one-fifth of the amount first claimed from General Gratiot) was abandoned by the Government, clearly showing that he was dismissed for not paying \$31,712, when it was afterwards *voluntarily admitted* that the demand against him was erroneous and unjust, *at least* to the amount of \$8,463 87, and that the President's order; therefore, required him to pay into the treasury at least \$8,463 87 which, as was afterwards admitted, was actually his own money; and,

4th. That but for the loss, through negligence on the part of the agents of the Government, of a paper containing evidence material to the support of an important item of General Gratiot's claim, there is reason to believe he would have legally established that he was not indebted to the United States at all!!

Concede the power to dismiss an officer from the public service on such grounds, and the precedent in General Gratiot's case can be visited upon any disbursing agent whose misfortune it may be to disagree with the accounting officers of the treasury on the settlement of his accounts by them. The rights of the agent under such rule would merge, of necessity, in the will of the treasury officers.

In reference to the alleged neglect to render accounts in obedience to law, it has already been shown by the letter of Benjamin Fowler, before quoted, that the neglect, *if any*, was his.

But it may be well to examine whether there was, in this respect, any neglect at all.

The second section of the law of 31st January, 1823, requires that dis-

bursing agents shall render their accounts "quarter-yearly" for settlement.

The President by his General Regulations of 1825, article 67, paragraphs 897 and 898, prescribed the manner in which the quarter-yearly accounts of disbursing agents should be rendered to the proper accounting officers of the treasury for settlement. These regulations made the Engineer Bureau one of the intermediates between its disbursing agents and the Treasury. It follows, then, as a consequence on the proper execution of the requirements of these regulations, that all accounts which had been received, and so reported, as being in the Engineer Bureau, were and had been "rendered" according to, and in strict "obedience" to the requirements of the second section in question. (For the usage and practice under the regulations, see House Document, No. 77, 25th Congress, 3d session, pages 34 and 35.)

As regards my case, the same practice maintained; there could be no good reason why a contrary one should have been enforced.

The accounts, when received at the Bureau, were either forthwith examined, or, as it frequently occurred, were permitted to lie over for some time before examination. In order, however, to conform to the requirements of the law, and also for the information of the accounting officers, a general report of the accounts received at the Bureau during each quarter was made to them. These reports were regularly made from the Engineer Bureau at the commencement of each quarter, and were acquiesced in by the Auditor and Comptroller. Their reason for this acquiescence is obvious, because, so far as each disbursing officer was concerned, the provisions of the law had been fully satisfied; else, why was the practice permitted to run on for so many years?

Moreover, if at any time the accounting officers had wished to be further informed in reference to any one account so reported as being in the Bureau, either of them could, as in 1832, (see House Document No. 77, 25th Congress, 3d session, page 23) have officially required its forthcoming, or have asked additional explanations. This was not done, and their silence was a tacit acknowledgment that my quarter-yearly accounts, reported as in the Engineer Bureau, were considered as having been rendered and received at the Treasury according to law.

This view of the subject is admitted by the Third Auditor in his letter to the Second Comptroller of the 20th October, 1838. (See House Document No. 77, 25th Congress, 3d session, page 34.)

The preceding is respectfully submitted, under the honest belief that a review of all the facts stated will establish my innocence, and prove that neither of the allegations against me, and upon which I was dismissed from the army, were founded in fact.

C. GRATIOT.

WASHINGTON, *April* 9, 1849,

C.

Extracts from House Document No. 77, third session, 25th Congress.

No. 1.

[Letter from the Secretary of War to General Gratiot, and his answer thereto.]

WAR DEPARTMENT, *November 19, 1838.*

SIR: The act of January 31, 1833, "concerning the disbursement of public money," requires, among other things, that "every officer or agent of the United States who shall receive public money which he is not authorized to retain as salary, pay or emoluments, shall render his accounts quarter-yearly to the proper accounting officers of the treasury, with the vouchers necessary to the correct and prompt settlement thereof, within three months at least after the expiration of each successive quarter;" and it directs that every officer or agent who does not do so "shall, by the officer charged with the direction of the department to which such offending officer is responsible, be promptly reported to the President of the United States, and dismissed from the public service: *Provided*, That in all cases when any officer in default as aforesaid shall account to the satisfaction of the President for such default, he may be continued in office."

You are responsible to this department, and I am charged with the direction of it; and proper evidence having been laid before me of your having offended against the provisions of the above act, by not having accounted, as required by it, for public money in your hands, it has consequently become my painful duty to report you to the President, as is imperatively required by the act. This was done on the 16th instant, since which time I have received the directions of the President to inform you of your having been reported to him. You are hereby informed accordingly.

Very respectfully, your most obedient servant,

J. R. POINSETT.

Brevet Brig. Gen. CHARLES GRATIOT,
Chief Engineer.

ENGINEER DEPARTMENT,
Washington, November 20, 1838.

SIR: I have the honor to acknowledge receipt of your letter of October 23d, enclosing copy of one from the Comptroller of the Treasury, reporting me for "having neglected, since the first quarter of 1837, to render his [my] accounts quarter-yearly to the proper accounting officer of the treasury, with the vouchers necessary to the correct and prompt settlement thereof, agreeably to the act of January 31, 1823;" also, your letter of the 19th instant, informing me that, in the fulfilment of your duty, this circumstance had been reported by you to the President, who directed that I should be informed thereof.

The first letter was detained at the office till my return, (I being absent from Washington at the date of its reception.) Almost immediately after this return I was taken sick, and have been confined since that time till

yesterday, when I was able to resume my duties ; but for this interruption, the subject would have received an earlier attention.

In explanation, I have to state, that it has been entirely through inadvertence that these accounts have not been rendered. There being no disbursements for the work for which the money was retained in my hands, the account would have been a simple "account current," a mere statement that such an amount was due the United States; and it was from this circumstance, and not being strictly a disbursing officer, that its transmission to the accounting officer was omitted. In cases of other disbursing officers of the department, who have retained money in their hands without making disbursements, the explanation, in the quarterly report rendered regularly to the accounting officer, against their names, of "no disbursements," has apparently been always satisfactory, without a formal account-current, though not according to strict legal requirements.

I regret that this inadvertence has subjected me to official censure, and enclose herewith, for the files of the Auditor's office, (in order first to be submitted to the inspection of the President,) the accounts in form, for the several quarters wanting; and I have to request that any action in my case, should such be deemed necessary, may be suspended until the *whole* of my accounts are settled, when whatever balance may be found against me will be accounted for.

In explanation of the manner in which the transmission of the accounts has been neglected, I enclose herewith a statement of the chief clerk in the office, whose duty it is to prepare and transmit them.

Very respectfully, your obedient servant,

C. GRATIOT.

Hon. J. R. POINSETT,
Secretary of War, Washington.

No. 2.

[Letter from General Gratiot to the Secretary of War, and a letter from the Secretary of War to the President.]

ENGINEER DEPARTMENT,
Washington, November 26, 1838.

SIR: In compliance with your instructions under date of October 17, to submit in writing my reasons for retaining in my hands the unexpended balance of funds for the fort at Grande-Terre, I have the honor to state, that I have delayed returning these funds to the treasury, in consequence of the unsettled state of my former accounts, by which the true balance to be refunded is not ascertained; that the manner these were audited is yet unknown to me; but I have understood (not officially) that I have been under stoppage of pay since April, 1836. Under these circumstances, unable to say what amount had to be refunded, I have postponed making the deposit required under the regulation of March 2, 1838.

As the President has now determined that this money can no longer be thus retained, I have to request that my account may be made out in detail by the accounting officer, with his reasons for the suspension of the

several items, in order that the whole case may be laid before the President, when the balance that shall appear against me will be refunded to the treasury. The depositing of the whole amount of the balance for Grande-Terre, a large portion of which would have immediately to be refunded to me on allowed claims, will not, I presume, be insisted upon; a portion of it I have used, considering it my own property; and the raising of the whole of this large sum immediately would, to say nothing of the injustice of requiring it at the present juncture, be ruinous.

The above statement will, I trust, prove satisfactory to the President, and convince him that nothing could be further from my wish than to retain in my hands public funds for any other purpose than to secure what I consider a just claim on the Government.

I am, sir, very respectfully, your obedient servant,

C. GRATIOT.

Hon. J. R. POINSETT,
Secretary of War, Washington.

WAR DEPARTMENT,

November 27, 1838.

SIR: Agreeably to your instructions, to present to you the facts in the case of General Gratiot, who has been reported to you, both for not rendering his accounts according to law, and for retaining certain public funds in his hands, I have the honor to report:

That General Gratiot, in rendering his accounts for the disbursements he made while superintending the works at Forts Monroe and Calhoun, charged, in the first account he rendered to 31st March, 1822, a per diem allowance of two dollars as disbursing-officer from November 13, 1821, to the end of the first quarter of 1822, which being a legal charge, was allowed and paid; and he continued this charge up to the second quarter of 1825, which was admitted to his credit. In his account rendered for the third quarter of 1825, he claimed for the first time a per diem of two dollars for *each* of the works under his superintendence. The charge for Fort Calhoun was disallowed, and he received for that period only two dollars per day, being, in the opinion of the Third Auditor, all he was entitled to under the army regulations. The General continued to charge at the rate of four dollars per day, although he was informed at the settlement of his accounts for each quarter that only two dollars a day was admissible, and had been allowed to his credit. The Chief Engineer, General Macomb, in transmitting to the Third Auditor's office the accounts of General Gratiot for the third quarter of 1826, disallowed the four dollars a day, and reduced it to two dollars. From this period until the final rendition of his accounts to the close of the quarter ending 30th September, 1829, General Gratiot made no charge for a per diem allowance, or for any compensation for disbursing on account of those works; but in his final account rendered in 1829, he charges on *each* work a per diem of two dollars from the 13th November, 1821, to the 30th September, 1829, amounting for *each* work to five thousand seven hundred and fifty-eight dollars. On the settlement of this account, he was allowed at the rate of two dollars a day, instead of four dollars, which he charged up to the 30th September,

1829, being five thousand seven hundred and fifty-eight dollars. From the foregoing facts, it would appear that General Gratiot did not consider himself entitled to a greater per diem allowance for his extra services as disbursing officer on the works he was superintending than two dollars a day, as provided for by the army regulations, until the third quarter of 1825, nearly four years subsequent to the commencement of his duties; and that, after the opinion expressed by the Chief Engineer of his understanding of what per diem General Gratiot was entitled to, he ceased to charge for his services as disbursing officer in his quarter-yearly accounts, until, rendering his accounts to the close of his disbursing, to wit: for the quarter ending on the 30th September, 1829, he again charged for the whole period, at the rate of two dollars a day for each work, notwithstanding the opinion of the Chief Engineer and the decision of the accounting officer. In the final settlement made by the Third Auditor, General Gratiot being allowed the full per diem to which he was entitled under the regulations of the army, a balance was found against him of \$8,958 91 on the 24th of March, 1831, whereas, in the account presented by himself, he acknowledged the balance due by him to the United States of \$2,508 52, making a difference of \$6,450 39. The balance of \$8,958 was reported to the Second Comptroller of the Treasury for stoppage, as being due by General Gratiot on the 31st of August, 1831, and again on the 11th of August, 1832. In September, 1831, the acting Secretary of War, Mr. McLane, suspended the stoppage, and in April, 1833, General Gratiot presented a new account, by which he abandoned his former claims to a per diem allowance under the army regulations, considering them as not applicable to his case, but to that of an engineer performing the duties of a military agent at a fortification. He then claimed one per cent. on the amount of his disbursements, under the provisions of the law of 1809, regulating the compensation of disbursing officers; by which he brought the United States in debt to him six hundred dollars, making a difference in his favor of \$1,908 52 between his first and second accounts. This account was reported upon *adversely* by the Third Auditor, and transmitted by the Second Comptroller to the Secretary of War, requesting its submission to the Attorney General for his opinion in the premises. According to the decision of the accounting officers of the treasury, a balance of \$8,958 was due by General Gratiot, from August, 1831, and he remained in possession of this money until 1836, when the order for stoppage of his pay was renewed and carried into execution.

In 1835, there was placed to his credit in the Mechanics' Bank of New York, \$50,000 for the works of Grande-Terre, by two drafts, \$15,000 of which was soon after returned to the treasury, leaving in his hands a balance of \$35,000, which he still retains. In March, 1838, the President determined that no chief of a bureau should be a disbursing officer, and this order was signified to General Gratiot, in order that he might turn over the money then in his hands. In July following, he was again directed to pay over that money, and the order was reiterated in August following. Upon receiving this order, which was directed to the acting Secretary of War, General Gratiot stated verbally to Major Cooper that the Government was indebted to him a considerable amount on account of disbursements made at Old Point Comfort many years ago; that his accounts had been regularly rendered, but were disallowed or suspended, and

his pay ordered to be stopped; and that he therefore desired to hold the money to his credit until a final settlement of his accounts could be obtained. On my return to the office in October, I required a written answer to the order given in August: shortly after which the Second Comptroller reported General Gratiot for having neglected, since the first quarter of 1837, to render his accounts quarter-yearly to the proper accounting officers of the treasury, with the vouchers necessary to the correct and prompt settlement thereof, agreeably to the act of January 31, 1823. In explanation, the general stated that it had been entirely through inadvertence that these accounts had not been rendered, there being no disbursements for the work for which the money had been retained in his hands. "The account," he says, "would have been a simple account-current—a mere statement that such an amount was due by me to the United States; and it was from this circumstance, and my not being strictly a disbursing officer, that its transmission to the accounting officer was omitted." On the 26th of this month, I received the letter from General Gratiot which accompanies this report. By this report it will be seen that General Gratiot delayed returning the funds to the treasury, according to the repeated orders he had received, because he was ignorant, from the unsettled state of his accounts, of the true balance to be refunded; that he acknowledges to have used a portion of it, which he regarded as his own property, until a balance was struck by a final settlement with the accounting officers; and presumes that the orders to deposite the whole amount of the \$35,000 will not be enforced, as a large portion of it would have to be immediately refunded to him on allowed claims; and that the raising of the whole of this large sum immediately, would, to say nothing of the injustice of requiring it at the present juncture, be ruinous. This pretension, on the part of General Gratiot, to consider as his own property the funds placed in his hands as Chief Engineer, to be employed in the public service is subversive of all enactments for the security of the public moneys. By such means, an officer may evade the law which provides that his pay shall be stopped until the balance found against him by the accounting officer of the Government be paid, as General Gratiot has done; and by such reasoning, an officer would be excused for applying to his use the public funds in his hands, although, by the "Rules and Articles of War," he is liable to be cashiered for so doing. In short, if such conduct be tolerated, and such principles admitted, there will no longer be any security for the public moneys in the hands of any officer of the Government, whose claims and charges are not allowed by the accounting officers, however illegal and unconscionable they may be.

It appears, then, that General Gratiot enjoyed the use of public money to the amount of \$8,958, at least from September, 1829, the period of the final rendition of his accounts, until his pay was stopped in 1836; and from 1835 to this date, had in his hands the additional sum of \$35,000, making an aggregate of	-	-	-	-	-	\$43,958
From which, if the amount of his pay and emoluments stopped to this date be deducted	-	-	-	-	-	12,246

There will remain a balance due the Government of	-	-	-	-	-	31,712
---	---	---	---	---	---	--------

If, however, his own statements be admitted, and the first account be

allowed, in which he claimed two dollars a day for each work he super-			
intended, there will be a balance against him of	-	-	\$6,450
To which add, in his hands since 1835	-	-	35,000

Total	-	-	-	-	-	41,450
From which deducting his pay and emoluments, stopped from						
1836	-	-	-	-	-	12,246
There remains due the United States	-	-				29,204

Admitting the whole of his claim to be due him upon his account, as subsequently presented by him on a different principle, of one per cent. upon the whole amount disbursed, the balance will be in his

favor	-	-	-	-	-	\$600
Pay and emoluments stopped since 1836	-	-				12,246
Unsettled and unrepresented claims for transportation	-	-				500

Total due General Gratiot, according to his own statement	-					13,346
Which deducted from	-	-	-	-	-	35,000

Leaves a balance due by him to the United States of	-	-				21,654
---	---	---	--	--	--	--------

which, it is presumed, is still in the Mechanics' Bank in New York to his credit, as he could on no pretext consider this sum as his own property; and which if it shall appear that he has used, I recommend that he be tried by a court-martial, according to the "Rules and Articles of War," for applying public money to his own use. I should not do my duty if I failed to express my firm conviction that General Gratiot is amenable to that tribunal, and liable to be cashiered for using any portion of the thirty-five thousand dollars confided by the department to his charge; and I only refrain from advising that course, because the opinion of the Attorney General on his accounts does not appear to have been required by the Secretary of War, in conformity with the request of the Second Comptroller, and the reference of the accounts to the department has, in both instances, remained unacted upon. I am likewise reluctantly compelled by my duty to state that General Gratiot's excuses and reasons for not having presented his accounts quarter-yearly, as required by law, are not satisfactory to me. The safe-keeping of so large an amount of public money is a grave concern, and its employment ought to be regularly accounted for; and if unemployed, the fact of its being in hand ought to be punctually stated, and, in my opinion, the place of its deposit specified. The fact of General Gratiot not being a regular disbursing officer does not, as he supposes, alter the case; for the law requires quarter-yearly accounts to be rendered by *all* officers holding public moneys, and makes it the duty of the President to dismiss them from the service if they fail to do so, or to assign reasons satisfactory to him for their failure to comply with the law in this respect.

All of which is respectfully submitted.

J. R. POINSETT.

To the PRESIDENT of the United States.

No. 3.

[Order of the President.]

WASHINGTON, *November 28, 1838.*

The President has carefully considered the communication of the Secretary of War in the case of General Gratiot, who has been reported to him for not rendering his accounts according to law, and for retaining certain public funds in his hands.

He concurs fully in the opinion, that the retention, and more especially the application to his own use, by a public officer, of moneys drawn from the treasury for the public service, and so retained to satisfy alleged claims upon the Government which have been rejected by the regular accounting officer of the treasury as not authorized by law, is an abuse of trust, which, if countenanced by the Executive, would subvert the most salutary portions of the existing enactments for the security of the public moneys. The Secretary of War will therefore direct General Gratiot to pay into the treasury the sum of \$21,654, which he admits to be still in his hands, and against which he presents no claim, forthwith; and the remaining sum of \$10,058, in the course of thirty days. A decision of the question in relation to the sufficiency of General Gratiot's reasons for not rendering his accounts according to law, will be deferred until an opportunity is afforded General Gratiot to comply with the directions to be given to him in respect to the repayment of the public funds in his possession.

The Secretary of War will cause General Gratiot to be furnished with a copy of this order, and of his report.

M. VAN BUREN.

[The above order, and a copy of the report of the Secretary of War, were furnished General Gratiot on the 28th of November, 1838.]

No. 4.

[Letter of the Secretary of War to the President.]

WAR DEPARTMENT, *December 3, 1838.*

SIR: Since the report presented to you on the 27th November last, General Gratiot's account-current with the Mechanics' Bank of New York, in which the Government funds were deposited to his credit for public purposes, has been received at this department. By this statement it appears that the whole amount of the \$50,000, deposited for carrying on the works at Grande-Terre, was drawn out of the bank by General Gratiot in the years 1835 and 1836; and that only \$15,000 of that money has been accounted for.*

I have the honor further to report, that General Gratiot has not yet paid the amount, or any part of it, that you directed should be forthwith paid into the treasury of the United States.

Respectfully, your obedient servant,

J. R. POINSETT.

The PRESIDENT of the *United States.*

* See No. 6, page 30.

[Copy of the endorsement made by the President of the United States on the above.]

“General Gratiot having failed to pay into the treasury the balance of the moneys placed in his hand in 1835 for public purposes, after suspending therefrom the amount which he claims to be due him on settlement of accounts, according to my order, communicated to him by the Secretary of War on the 28th of November last; and having neglected to render his accounts in obedience to the law of January 31, 1823, the said General Charles Gratiot is hereby dismissed from the service of the United States.

M. VAN BUREN.

WASHINGTON, *December 4, 1838.*”

No. 5.

“*An act to prevent defalcations on the part of disbursing agents of the Government, and for other purposes,*” approved January 25, 1828.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That no money hereafter appropriated shall be paid to any person, for his compensation, who is in arrears to the United States, until such person shall have accounted for, and paid into the treasury, all sums for which he may be liable: *Provided,* That nothing herein contained shall be construed to extend to balances arising solely from the depreciation of treasury notes received by such person to be expended in the public service; but in all cases where the pay or salary of any person is withheld, in pursuance of this act, it shall be the duty of the accounting officers, if demanded by the party, his agent or attorney, to report, forthwith, to the agent of the Treasury Department the balance due: and it shall be the duty of the said agent within sixty days thereafter to order suit to be commenced against such delinquent and his sureties. (*Cross's Military Laws, chapter 142, page 223.*)

No. 6.

Extract of a letter from General Gratiot to the Hon. J. R. Underwood, dated Washington, January 6, 1839.

In April, 1833, these differences still existing, the Secretary of War submitted the subject to the Attorney General, who declined giving an opinion in the case, and the matter remained unsettled.

In December, 1835, during the existence of difficulties with France, Congress having refused an appropriation of money for defence of the country, it was determined to make use of such balances of existing appropriations as could be diverted from their proper objects without serious injury to the service, and to apply them to the purposes of repair and armament of the fortifications. To do this, the money was drawn from the treasury and placed in my hands, as a general fund, to be remitted to various officers of the engineer and ordnance departments, for the purposes stated. Of the whole sum, (say \$100,000,) about \$95,000 were thus drawn

from the banks in which they had been deposited to my credit. These funds were advanced to different officers; and when appropriations for the particular purposes for which they had been used were afterwards made, the sums thus advanced were refunded to me, and paid back into the treasury to the account of the appropriations from which they had been first drawn, commencing with the object for which they were most needed. Some of these funds were returned to me only in 1838.

The works at Grande-Terre, Louisiana, having been suspended, the amount drawn originally from that appropriation was to be the last refunded, as not being required for the purpose to which it was applicable. Pending these occurrences, in April, 1836, whilst I was still chargeable with this large amount of funds, which were actually not in my hands, (as above shown,) my pay was ordered to be stopped on account of the balance reported against me in the former settlement. Of this stoppage of pay I was not even officially advised; and but for an accidental conversation with a paymaster at a public place, I should have remained ignorant of the fact until informed of it by the refusal of the paymaster to discharge my pay whenever I might present an account. It was under these circumstances that I considered myself entitled to the use of the public funds in my hands, so far as necessary for my own subsistence and that of my family; and finding myself placed in this unpleasant situation, I informed the Secretary of War, when called on, that I intended to retain the unexpended balance in my hands until a final adjustment of all my accounts, when I would pay over the balance which might be found due to the United States. The Secretary of War's call on me, dated 17th October last, was handed to me on the eve of my departure from this city, with a verbal message that it need not be answered until my return. In consequence of this message and of my subsequent sickness for some days, the answer was deferred until the 20th of November; and in the mean time, (through whose means I know not,) I was publicly stated to be a defaulter. On the receipt of my answer, the President directed that the whole amount claimed by the United States should be paid—about two-thirds of it forthwith, and the balance in thirty days.

My impression that the course here directed would enable the Government to deny the charge of defalcation, and would be used for that purpose, was confirmed by a conversation with others; but, in the course of my arrangements for effecting the object, I learned, with surprise, that I should be expected, after complying with this demand, to sacrifice my commission. As such a course could have been considered only as an acknowledgment of guilt, and, by throwing it out of the power of the Government to bring a suit, (whilst there was no such power on my part,) would have deprived me of any means to bring the matter to a proper adjudication—would, in fact, have inflicted on me the deepest injury without hope of redress in any manner; I determined to refuse compliance with such injunctions, and to suffer such consequences as my refusal might produce.

The matter in dispute will now be brought, without delay or impediment on my part, to a judicial decision; and the judgment of a court of justice will place the subject in its proper light.

I have the honor to be, very respectfully, your obedient servant,

C. GRATIOT.

Hon. J. R. UNDERWOOD,
House of Representatives.

No. 7.

EXTRACT FROM A LAW OF JANUARY 31, 1823.

CHAPTER 9.—*An act concerning the disbursement of public money.*

SECT. 2. *And be it further enacted*, That every officer or agent of the United States, who shall receive public money which he is not authorized to retain, as salary, pay, or emoluments, shall render his accounts quarterly to the proper accounting officers of the treasury, with the vouchers necessary to the correct and prompt settlement thereof, within three months, at least, after the expiration of each successive quarter, if resident within the United States ; and within six months if resident in a foreign country : *Provided*, That nothing herein contained shall be construed to restrain the secretaries of any of the departments from requiring such returns from any officer or agent, subject to the control of such secretaries as the public interest may require.

SECT. 3. *And be it further enacted*, That every officer or agent of the United States, who shall offend against the provisions of the preceding sections, shall, by the officer charged with the direction of the department to which such offending officer is responsible, be promptly reported to the President of the United States, and dismissed from the public service : *Provided*, That in all cases where any officer, in default as aforesaid, shall account to the satisfaction of the President for such default, he may be continued in office, any thing in the foregoing provision to the contrary notwithstanding.

SECT. 4. *And be it further enacted*, That no security given to, or obligation entered into with the Government, shall be in any wise impaired by the dismissing any officer, or from failure of the President to dismiss any officer, coming under the provisions of this act.

[*Approved January 31, 1823.*]

No. 8.

[Letter of the Secretary of War to the Speaker of the House of Representatives.]

WAR DEPARTMENT,
January 12, 1839.

SIR : In compliance with so much of the resolution of the House of Representatives as relates to the defalcation of General Charles Gratiot, late Chief Engineer, I have the honor to transmit herewith copies of all the papers (from No. 1 to 40) which relate to that subject. The facts respecting the defalcation are all embodied in the letter of the Secretary of War to the President of the United States, dated the 27th November, 1838, (document 9.)

Very respectfully, your most obedient servant,

J. R. POINSETT.

Hon. J. K. POLK,

Speaker of the House of Representatives.

No. 9.

[Letter of the Second Comptroller to the Secretary of War.]

TREASURY DEPARTMENT,
Second Comptroller's Office, January 5, 1839.

SIR: In answer to the resolution of the House of Representatives of the 3d instant, referred to me from the War Department, I have to report, that from the books and records of this office, and the records and files in the office of the Third Auditor of the treasury, it appears that General Gratiot, under the direction of the War Department, was charged with the superintendence of the works at Fortress Monroe and Fort Calhoun, and, as superintendent, was intrusted with the disbursement of public money from November 13, 1821, to September 30, 1829. On the settlement of his accounts on the 24th of March, 1831, a balance of eight thousand nine hundred and fifty-eight dollars and ninety-one cents was found due from him to the United States.

On the 2d of September, 1831, the Paymaster General was directed by the Second Comptroller to stop this amount of \$8,958 91 from said Gratiot's pay.

On the 28th of September, 1831, this order for stoppage was suspended by the acting Secretary of War, Mr. McLane, and General Gratiot continued to receive the pay and emoluments of his office until April 1, 1836, when the stoppage was renewed and continued up to December 6, 1838, the day of his removal from office. The amount of pay and emoluments retained under the order for stoppage exceeds the \$8,958 91, ordered to be stopped by the Second Comptroller in 1831. I am not aware that the resolution calls for any further information relating to the accounts before referred to.

On the 30th of June, 1834, Congress appropriated fifty thousand dollars for a fort at Grande-Terre, Louisiana, which was drawn from the treasury upon requisitions of the War Department, in favor of General Gratiot, then at the head of the corps of engineers, as follows:

On the 17th of November, 1835, twenty thousand dollars.

On the 21st of December, 1835, thirty thousand dollars.

On the 31st December, 1836, General Gratiot deposited to the credit of the United States the sum of fifteen thousand dollars, retaining the residue, as understood by the accounting officers, to be applied to the purpose for which it was appropriated.

On the 22d of October last, General Gratiot, having neglected to account for the expenditure of the thirty-five thousand dollars, was reported to the Secretaries of War and of the Treasury as having failed to render his accounts according to law; and a transcript, showing a balance due the United States, of \$31,674 48, was made out as soon as practicable, and transmitted to the Solicitor of the Treasury, for suit.

As all disbursing officers are by law required to render their accounts to the auditors of the treasury, the correspondence with General Gratiot, relative to the settlement of his accounts, so far as appertains to the accounting officers, will be found with the Third Auditor.

It is believed that the foregoing contains all the information called for

relative to the case of General Gratiot, so far as it has come under the cognizance of the Second Comptroller.

I am, sir, very respectfully, your obedient servant,

ALBION K. PARRIS,
Comptroller.

Hon. J. R. POINSETT,
Secretary of War.

No. 10.

[Benjamin Fowler's statement, and letter of the Third Auditor to the Second Comptroller.]

NOVEMBER 20, 1838.

The subscriber, principal clerk in the office of the Chief Engineer, among other duties, is charged with that of transmitting the accounts of disbursing agents to the office of the Third Auditor of the Treasury, after they have received the examination required by the regulations; he also prepares the quarterly statement of disbursing agents, called for by the Third Auditor, in which are shown the names of agents whose accounts for the quarter have been received, and transmitted to the Auditor; those whose accounts have been received, but, for want of time to give them the required examination, remain in the office; and of those who have failed to render accounts for the period stated, noting, whenever so advised by the agents, or positively known to the department, that no disbursements had been made within the quarter. This has been the practice for a considerable time back, and he has never understood otherwise but that it was perfectly satisfactory. In the particular case of General Gratiot, the statement furnished to the Third Auditor of the agents having to render accounts for the fourth quarter of 1837, it is written opposite his name, "*Received, and in the office of the Chief Engineer;*" for the first quarter of this year, it is stated, "*Account in the Engineer department;*" and for the second quarter, "*No disbursements.*" As these explanations were not objected to as insufficient by the accounting officers, so far as I am advised, the strict conformity with the requirements of law has been lost sight of; and if any blame is to attach for this, it must be to myself, whose duty it was to see that the accounts-current were sent to the Auditor, whether disbursements were made or not.

BENJAMIN FOWLER,
Clerk in the office of the Chief Engineer.

TREASURY DEPARTMENT,
Third Auditor's Office, October 20, 1838.

SIR: I have received your letter of the 19th instant, on the subject of the advances made to General Gratiot out of the appropriation for a fort at Grande-Terre, Louisiana, and requesting from me "a special report in this case, setting forth all the facts, and especially the reasons why said Gratiot has not been reported as having failed to comply with the law of the 31st

January, 1823, agreeably to the instructions of the Secretary of the Treasury of the 24th November, 1829, and June 14, 1832."

In compliance with your request, I have to state, that in regard to the advances made to General Gratiot out of the appropriation for a fort at Grande-Terre, there was advanced to him, by requisition of the Secretary of War bearing date 17th November, 1835, \$20,000, and by requisition dated 31st December, 1835, \$30,000 : making, together, \$50,000. That on the 31st December, 1836, he transmitted to this office evidence of having deposited to the credit of the Treasurer of the United States \$15,000, with an account-current for the fourth quarter of 1836, in which he acknowledged a balance to be remaining in his hands of \$35,000, agreeing with the official balance on the settlement of his account in this office, and now standing at his debit on the books thereof; that the only account found to be subsequently rendered by General Gratiot to this office is an account-current for the first quarter of 1837, in which he states the above balance then to be due to the United States, "on account of the appropriation for a fort at Grande-Terre, Louisiana." In regard to the reasons why General Gratiot has not been reported as having failed to comply with the law of the 31st January, 1823, and the instructions of the Secretary of the Treasury, I have to state, referring to the sixty-seventh article of the General Regulations for the Army, that as paragraph eight hundred and ninety-seven, containing instructions to be observed in keeping and rendering accounts for disbursements made under the direction of the engineer department, directs that the accounts and vouchers are to be transmitted to the engineer department within ten days after the expiration of the quarter; and paragraph eight hundred and ninety-eight, requiring that accounts so transmitted must be minutely examined, and when the examination shall be completed the accounts must be transmitted to the Auditor for settlement, accompanied by a statement from the Chief Engineer that they have been examined agreeably to this regulation, and were approved; and as all accounts for disbursement made under instructions from the engineer department are, in accordance with this regulation, rendered to that office by the disbursing officers and agents, as are also the accounts of the disbursing officers and agents under instructions from the other bureaux of the War Department, it became indispensable, when a report was to be prepared in this office, under the law of 31st January, 1823, that information should be obtained from each bureau as regarded the officers and agents held accountable at this office; therefore, with a view to make my report as early after the end of the quarter as practicable, a request is sent to the different bureaux, some days previously, to be furnished with a list of the disbursing officers who had to render accounts for the preceding quarter, and of those who had failed to do so. On receiving the list furnished by each bureau, such officers and agents only as are there stated to have omitted to render their accounts are embraced in my quarter-yearly reports made to the Second Comptroller. The following remarks opposite the name of General Gratiot, in the lists furnished by the Chief Engineer, commencing with the fourth quarter of 1835, to the second quarter of 1838, inclusive, will show that he is in no instance represented as having omitted to render his accounts; but in each quarter his accounts are stated as being rendered or in the engineer department, with the exception of the first quarter of 1836 and second quarter of the present year, when he is report-

ed as having made "no disbursements;" consequently his name has not been included with those officers and agents who have been reported from this office as having omitted to render their accounts for settlement.

Lists.	Remarks.
4th quarter, 1835,	"Accounts in engineer department."
1st quarter, 1836,	"No disbursements."
2d quarter, 1836,	"In engineer department."
3d quarter, 1836,	"Accounts rendered, and transmitted to the Third Auditor."
4th quarter, 1836,	"Accounts rendered, and transmitted to the Third Auditor."
1st quarter, 1837,	"Transmitted to Third Auditor's office."
2d quarter, 1837,	"Received in engineer department."
3d quarter, 1837,	"Received, and in the office of the Chief Engineer."
4th quarter, 1837,	"Accounts rendered, and in the engineer department."
1st quarter, 1838,	"Account in the engineer department."
2d quarter, 1838,	"No disbursements."

Most respectfully, your obedient servant,

PETER HAGNER,
Auditor.

ALBION K. PARRIS, Esq.,
Second Comptroller.

No. 11.

[Extracts from Document B.]

The inference must be, that when the President required the payment into the treasury of a specific sum of money, he did so from representations and belief that it was a balance due on a *legally settled* account which was not susceptible of alteration; or, in other words, that the balance claimed was an ascertained one, which could not be increased or diminished on a final settlement. In this case such was not the fact, as the record of the circuit court of the United States for the Missouri district, in which General Gratiot was finally sued, will show.

The treasury transcript brought in evidence against General Gratiot on the trials of this suit, may be referred to for dates, amounts, &c., of settlements made of his accounts by the accounting officers of the treasury.

These settlements will prove that the President *was not* correctly informed in regard to his accounts.

It appears from the record of the proceedings of the court, on the first trial, pages 42 and 43, that on an official settlement by the accounting officers of the treasury on the 16th of January, 1837, a balance of \$43,958 91 was claimed for the United States.

In the record of the court, on the second and final trial of this case, it is shown at pages 76 and 92 that the Paymaster General of the army, and the Second Auditor of the treasury, both testify that General Gratiot's pay was stopped from the 31st of March, 1836. The settlement just referred to

contains no credit for the amount of pay, &c., stopped between the 31st of March, 1836, and its date, (16th January, 1837,) as it clearly should have done. The omission of this credit, amounting to upwards of \$3,500, proves the settlement to be erroneous, and its showing unjust towards General Gratiot.

On the 27th of November, 1838, more than ten months after the settlement, the Secretary of War assumed the above balance to be *the true amount* due. He, however, admitted a credit of \$12,246 for pay, &c., stopped from General Gratiot to that date, and thus reduced the claim of the United States to \$31,712, which amount he reported to the President General Gratiot had failed to account for.—(See his letter to the President, in House document No. 77, 3d session of 25th Congress, page 10.)

The President, assuming this latter sum to be a balance due from General Gratiot, against which he was not entitled to further credit, demanded payment of the whole sum.—(See his order of the 28th of November, 1838, quoted above.)

The next official treasury settlement was on the 17th of December, 1838—thirteen days after General Gratiot was dismissed. It is found in the record of first trial, at pages 44 and 45.

In this settlement the balance of \$43,958 91 claimed in the preceding settlement of 16th January, 1837, is charged, and a credit of \$12,284 46 is given for pay, &c., stopped; so that the balance resulting from, and claimed on this settlement, is \$31,674 45.

On the 30th January, 1839, fifty-seven days after General Gratiot was dismissed, another and final official settlement was made. This settlement may be found in record of first trial, at pages 50 and 51. In it the balance found in the last preceding settlement (\$31,674 45) is charged, and a credit is given for \$1,769 59, "*for sundry disbursements made by him at Fort Monroe in 1825, 1826, and 1827,*" which amount consisted of some of the items in General Gratiot's accounts which had been unjustly disallowed—as their being now credited admits—and for which, and other similar credits, he had for years contended in vain. The balance resulting from this settlement is \$29,292 13, for which amount General Gratiot was sued.

After the suit was brought, a further credit of \$6,034 was admitted *for disbursements made at Fort Monroe prior to 30th September, 1829.*—(See record second trial, page 109.) This amount also consists of items which had been unjustly disallowed, and for which, as for the preceding, credit had been several years contended for in vain.

A voucher which was essential to the establishment of an important item in my claim, and which would have more than absorbed the whole claim of the United States against me, could not be produced in evidence for the reason *that it had been taken from the files of the Second Auditor's office!!* (See deposition of Second Auditor, in record of second trial, at pages 77 and 80.) That voucher was submitted to the Secretary of War, who endorsed on it a declaration to the effect that the brevet pay claimed by it was in consideration of military service, and did not include compensation for any services of a civil character. The copy produced in evidence *against General Gratiot*, purporting to be "a true copy," could not have been so, because it lacked the Secretary of War's endorsement, which was made only on the voucher sent to the auditor for settlement, and not on the duplicate retained by the paymaster from which the "*true copy*" was made.—(See deposition of Second Auditor in the record of second trial, at page 80.)

The plaintiff (the United States) was the custodian of this paper, and all the efforts of General Gratiot to cause it to be produced were unavailing; negligence in losing it deprived General Gratiot of the evidence relied on to sustain the validity of the important item referred to, and it is confidently believed that the want of the evidence the lost paper would have afforded, and the effect of the copy produced in evidence against General Gratiot, caused the final judgment against him.

From the foregoing the following facts are believed to be conclusively established :

1st. That General Gratiot was ordered on the 28th of November, 1838, to pay into the treasury a balance, claimed to be due from him to the United States, of \$31,712.

2d. That before suit was brought against him, viz : on the 30th of January, 1839, this claim was reduced by admitting some of the credits for which he had contended for years prior to the 28th of November, 1838, to \$29 292 13.

3d. That after suit was brought, another portion of this claim, amounting to \$6,034, (one-fifth of the amount first claimed from General Gratiot) was abandoned by the Government, clearly showing that he was dismissed for not paying \$31,712, when it was afterwards *voluntarily admitted* that the demand against him was erroneous and unjust, *at least* to the amount of \$8,463 87, and that the President's order, therefore, required him to pay into the treasury at least \$8,463 87, which, as was afterwards admitted, was actually his own money ; and,

4th. That but for the loss, through negligence, on the part of the agents of the Government, of a paper containing evidence material to the support of an important item of General Gratiot's claim, there is reason to believe he would have legally established that he was not indebted to the United States at all!!!

General Charles Gratiot, in account with the United States.

	Fortifica- tions.	Fort Calhoun.	Fort Monroe.			Fortifica- tions.	Fort Calhoun.
o warrant No. 8396, on account		\$18,500 00	\$11,550 00	1822.			
o do. No. 8433, on account		1,000 00		Jan. 7	By James Maurice, agent, for		
o do. No. 8518, on account		6,400 00			amount turned over to him, 7th		
o do. No. 8547, on account		10,100 00		June 26	and 20th Sept. 1821.....	\$19,500	
o do. No. 9182, on account			20,000 00		For expenditures made by him in		
o do. No. 9287, on account	\$52,550 00			26	the fourth quarter, 1821, and	\$38,041 61	12,195
o Jacob Lewis & Co., for the					1st quarter, 1822.....		
following sums received from					For this sum entered to his cred-		
them on their contract, for ad-					it, on account of fortifications,		
vances, viz :					in the official statement of this		
6th Nov., 1821, \$297	297 09			Sept. 14	date, as an advance to James	15,000 00	
1st Nov. ".....	349 62				Maurice, and which, on settle-		
14th Dec. ".....	90 97				ment of his account in Janu-		
2th Dec. ".....	201 98				ary last, was entered on the		
14th Dec. ".....	258 62				books to Colonel Gratiot's		
8th Dec. ".....	23 54				credit, on account of Fort		
2d Jan. 1822	33 43				Monroe, to reconcile which		
5th May, ".....	327 07				difference this entry is made..		
1st June, ".....	147 58				For sundry expenditures made		
14th June, ".....	267 95				by him on account of fortifica-		
3th June, ".....	208 67				tions on Old Point Comfort,		
o amount received from D.					viz :		
Shea, for smithing.....	6 40				For amount passed to his cred-		
o Charles Gratiot, General, for					it on settlement 26th June,		
this sum transferred to his debit					1822, under the head of Fort		
on this account, from that of					Calhoun, instead of fortifica-		
fortifications.....			15,000 00		tions; being stoppages made		
o warrant No. 9485, on account		20,000 00	7,000 00		from Jacob Lewis & Co., be-		
o requisition No. 26, on account		10,000 00	12,000 00		tween 10th Nov., 1821, and		
o do. No. 172, on account		900 00	3,550 00		2d Jan., 1822, of.....	\$535 29	
o Jacob Lewis & Co. for the fol-					For amount of stop-		
lowing sums received from them					pages made from Ja-		
on their contract, for advances,					cob Lewis & Co., from		
viz :					May 26 to June 25,		
6th June, 1822.....	176 32				1822	1,127 59	
2d July, ".....	878 90			14	For purchases and expenditures	1,662 88	
1th and 13th July, 1822.....	369 09				made by him in second quar-		
2d and 24th July, ".....	480 57				ter 1822, and for items sus-		
1st July, 1822.....	346 35				pended in last settlement		
2th Aug. ".....	504 77				of.....	\$14,394 84	
2th ".....	246 09				From which deduct this		
9th ".....	176 75				amount carried to his		
1st ".....	214 81				credit on account		
4th Sept. ".....	88 00				of fortifications, the		
o requisition No. 308, on account		6,500 00	10,000 00		same having been		
o do. No. 367, on account		7,000 00	5,000 00		passed to his credit		
o this sum received from Capt.					on settlement, 26th		
Carson for a coffin.....\$4 00					June, 1822, under the		
Otto from E. Mix, for land-					head of Fort Calhoun,		
ing his vessel, &c.....3 48			7 48		instead of fortifica-		
					tions, being for stop-		

ok D, Old Record—Supreme Court of the United States, January term, 1841.—No. 40. Charles Gratiot, plaintiff in error, vs. defendants in error. A writ of error to the Circuit Court of the United States for the District of Missouri.

No. 12—Continued.

General Charles Gratiot, in account with the United States.

	Fortifica- tions.	Fort Calhoun.	Fort Monroe.			Fortifica- tions.	Fort Calhoun.
Jacob Lewis & Co. for amount received from them for advances their contract, 19th Sep. 1822.	\$661 45			1822.	pages made from Ja- cob Lewis & Co., be- tween the 10th Nov. 1821, and 2d Janua- ry, 1822.		
26th Sept. 1822.	530 78						
requisition No. 521, on account		\$4,500 00	\$4,500 00			\$535 29	
do. No. 595, on account		1,100 00					\$13,850 50
do. No. 837, on account		21,000 00	11,500 60	Dec. 7	For sundry purchases and ex- penditures made by him in the third quarter of 1822, viz : Fort Monroe.....\$32,080 87 Fort Calhoun.....29,516 16		
Jacob Lewis & Co. for amount received from them for advances contract, viz : 7th Oct. 1822.	306 62					\$61,597 03	
Jacob Lewis & Co., for a- mount received from them for advances on contract, viz :					Deduct amount of stop- pages made from Ja- cob Lewis & Co., car- ried to his credit on separate statements, on account of fortifi- cations; the advances to them having been made out of that ap- propriation:		
Oct. 1822.	169 39				For Fort Monroe....\$4,108 91		
" "	412 34				For fort Calhoun..... 577 12		28,939 00
" "	223 50						
" "	294 58				For this sum, being amount of stoppages made from Jacob Lewis & Co., in third quarter of 1822, charged to him on this statement, and which amount is charged by him on account of Fort Monroe and Fort Cal- houn, from which they have been deducted, per statement of this date.	\$4,686 03	
Nov. "	314 78				7 For requisition No. 79, on ac- count, refunded.	11 00	
" "	290 69						
" "	483 49				1823.		
Dec. "	111 71			Mar. 16	For this sum, being the amount of stoppages from Jacob Lewis & Co., in the fourth quarter 1822, charged to him on this account, and which amount is charged by him in the abstract of payments made on account of Fort Monroe and Fort Calhoun.	3,238 24	
" "	256 40				16 For sundry purchases and ex- penditures made by him in the fourth quarter 1822 on account Fort Monroe.....\$22,897 42 Fort Calhoun.....7,346 66		
" "	374 74				His per diem allowance from 1st April to 31st December, 1822, 275 days, at \$2, being less		
requisition No. 968, on account		11,500 00	12,500 00				
do. No. 1056, on account		9,000 00	9,800 00				
Jacob Lewis & Co., for amount received from them for advances contract, viz : 7th January and 31st March, 1823.	499 00						
requisition No. 1178, on ac- count.		5,000 00	5,000 00				
requisition No. 1238, on ac- count.		9,400 00	17,400 00				
requisition No. 1400, on ac- count.	106 42						
Jacob Lewis & Co. for amount received from them for advances contract, viz :							
April, 1823.	387 59						
" "	154 93						
May, "	344 61						
" "	89 96						
" "	111 23						
" "	100 92						
June, "	260 47						
" "	138 49						
" "	171 93						
" "	109 39						
" "	113 04						
" "	177 17						
Major Samuel Cooper, for amount received from him 18th and 21st June, 1823.	310 40						
requisition No. 1409, on ac- count.		11,000 00	9,500 00				

No. 12—Continued.

General Charles Gratiot, in account with the United States.

	Fortifica- tions.	Fort Calhoun.	Fort Monroe.			Fortifica- tions.	Fort Calhoun.
Requisition No. 1483, on ac- count.....		\$11,000 00	\$13,000 00	1823. Mar. 16	than 2½ per cent. on the amount disbursed, including 50 cents de- ducted on former set- tlement.....		
Requisition No. 1608, on ac- count.....			20,000 00		\$550 50		
Requisition No. 1722, on ac- count.....	\$8,000 00		7,000 00		\$30,794 58		
Jacob Lewis & Co. for amount received from them for advances on their contract in third quar- ter, 1823.....	3,323 23				Deduct amount of stop- pages from Jacob Lewis and Co., carried to his credit on state- ment for fortifications, the advances to them having been made out of that appropriation, viz: Fort Monroe \$2,909 55 Fort Calhoun 328 69		
Major Samuel Cooper, for amount received from him per payments in July, August and September, 1823.....	486 66	10,000 00	15,000 00		328 69 3,238 24		\$7,017 97
Requisition No. 2136, on ac- count.....				June 2	For amount of stoppages made from Jacob Lewis & Co., in first quarter, 1823, charged to him in this settlement, and which amount is charged by him in the abstracts of payments made on account of Fort Mon- roe and Fort Calhoun, from which they have been deducted as chargeable to this account...		
Jacob Lewis & Co. for amount received from them in fourth quarter, 1823.....	1,525 18		289 97			\$499 00	
Major Samuel Cooper, for amount received from him in fourth quarter, 1823.....	227 69				For sundry purchases and ex- penditures made by him in the first quarter of 1823, including his per diem allowance from 1st January to 31st March, 1823, 90 days, at \$2, on ac- count of Fort Monroe,		
Requisition No. 2250, on ac- count.....		12,000 00	23,000 00		\$22,237 35		
Jacob Lewis & Co. for amount received from them in first and second quarters, 1824.....			1,543 60		Deduct amount of stop- pages made from Ja- cob Lewis & Co., car- ried to his credits on account of fortifica- tions.....	163 14	22,074 21
Requisition No. 2404, on ac- count.....		10,000 00	10,000 00		For sundry purchases & expenditures made by him in first quarter 1823, on account Fort Monroe.....	8,140 21	
Requisition No. 2503, on ac- count.....		24,800 00	19,500 00		Deduct amount of stop- pages made from Ja- cob Lewis & Co., car- ried to his credits on account of fortifica- tions.....	335 86	
Jacob Lewis & Co. for amount received from them in third quarter, 1824.....			3,292 36				
Amount received for three houses sold, &c.....			155 00		2 Requisitions Nos. 174 & 175, on account.....		
Major Samuel Cooper, for amount received from him in fourth quarter, 1824.....	1,925 18						
Major Samuel Cooper for amount received from him in fourth quarter, 1824, as per re- ceipt, 15th November, 1824....	50 39						
Jacob Lewis & Co. for amount received from them for advances on their contract, 15th Nov., 1824....			1,874 07				
Requisition No. 2751, on ac- count.....		32,600 00					
Requisition No. 2826, on ac- count.....			23,552 51				
Requisition No. 3277, on ac- count.....			25,000 00				
Major Samuel Cooper, for amount received from him in April, 1825.....	233 30						

No. 12--Continued.

General Charles Gratiot, in account with the United States.

	Repairs and contingencies.	Fortifications.	Fort Calhoun.	Fort Monroe.		Repairs and contingencies.	Fortifications.	Fort Calhoun.
Requisition No. 10, on account.				\$20,000 00	1822.			
Requisition No. 11, on account.			\$15,000 00		Aug. 12	For expenditures made by him on account of officers' permanent quarters during the quarter ending June 30, 1823	\$330 17	
Requisition No. 45, on account.				26,800 00	25	For this sum, being the amount of stoppages made from Jac. Lewis & Co. in the 2d quarter of 1823, charged to him in this settlement, and which amount is charged to him on the abstracts of payments made on account of Fort Monroe, from which they have been deducted on statement of this date as chargeable to fortifications...		
Amount received from Capt. Whiting, quartermaster, for sundry articles of public property sold him 1st quarter of 25				8,295 48		For this amount, stop'd as above from Maj. Samuel Cooper....		
Requisition No. 55, on account.				10,000 00		310 40		
Requisition No. 56, on account.			23,600 00	4,242 38			2,470 13	
Requisition No. 12, on account.			8,000 00		25	For sundry purchases and expenditures made by him in the 2d quarter of 1823, on account of Fort Monroe		
Requisition No. 13, on account.			10,800 00			His per diem allowance from April 1 to June 30, 1823—91 days, at \$2 per day		
Requisition No. 10, on account.				14,026 92		\$21,760 34		
Requisition No. 32, on account.			13,906 95			182 00		
Amount of sundry supplies furnished to and labor performed at Fort Calhoun to 1st Dec., 1824, retrofore provided for and charged to this appropriation, & subsequently taken and applied to Fort Calhoun.				13,906 95		21,942 34		
Amount received from Major H. Whiting, quartermaster, for sundry articles of public property sold him 2d quarter of 25				151 50		Deduct amount of stoppages made from Jac. Lewis & Co., carried to his credit on separate statement on account of fortifications, the advances to them having been made out of that appropriation, \$2,159 73, deduct amount stoppage from Sam. Cooper, \$310 40		
Requisition No. 13, on account.	\$8,000 00					2,470 13		
Requisition No. 14, on account.			647 37	13,906 95				
Amount received from Major H. Whiting for sundries sold him in 2d quarter of 25				191 67		19,472 21		

No. 12—Continued.

General Charles Gratiot, in account with the United States.

	Repairs and contingencies.	Fortifications.	Fort Calhoun.	Fort Monroe.			Repairs and contingencies.	Fortifications.	Fort Calhoun.
quisition No. on account.			\$15,000 00	\$15,000 00	1823.	Deduct requisit'n No. 228, on account.....	\$106 42		
quisition No. on account.			4,300 00	10,700 00					\$21,743 3
quisition No. on account.			7,500 00	7,000 00	1824.				
quisition No. on account.			7,800 00	7,000 00	Jan. 7	For sundry purchases and expenditures made by him in the 3d quarter of 1823, on account of Fort Monroe.....	\$35,372 60		
quisition No. on account.			10,000 00	5,000 00		His per diem allowance from July 1 to Sept. 30, 1823.....	184 00		
quisition No. on account.			5,000 00	9,000 00		Ditto, for permanent quarters..	6,014 43		
nt received sundry ar- s sold in 1st ter of 1826...			2 50	469 90			41,571 02		
quisition No. on account.			9,000 00	27,000 00		Deduct amount of stoppages from Jacob Lewis & Co., carried to his credit on account of fortifications, the advances to them having been made out of that appropriation.....	3,323 23		
quisition No. on account.			2,300 00	6,900 00					
nt received H. Whiting sundry ar- s sold in 2d ter of 1826...				172 65		Ditto, on account Fort Calhoun..	\$28,484 55		
quisition No. on account.			10,000 00	10,000 00		Deduct amount of stoppages from Samuel Cooper, carried to his credit on account of fortifications, the advances having been made out of that appropriation, \$486 66; deduct this sum credited by Col. Gratiot as so much refunded by E. Mix for supposed error in ac't, \$357 84.	844 50		
quisition No. on account.			6,500 00	8,500 00					
quisition No. on account.	\$2,614 89								
quisition No. on account.			4,500 00	12,000 00					
quisition No. on account.	\$11,000 00								
quisition No. on account.			9,000 00	14,000 00					
quisition No. on account.			8,500 00	7,500 00					
nt received sale of public erty in third fourth quar- 1826.....				1,078 51					
quisition No. on account.			8,500 00	9,500 00					
nt received sale of public erty in first ter, 1827...				224 12					
quisition No. on account.			6,000 00	23,000 00	7	For this sum, being the amount of stoppages made from Jacob Lewis & Co., in 3d quarter of 1823, charged to him in this settlement,			27,640 0
nt received sale of public erty in 2d ter, 1827...			75	82 91					

B

No. 12—Continued.

General Charles Gratiot, in account with the United States.

	Repairs & contingencies.	Fortifications.	Fort Calhoun.	Fort Monroe.			Repairs & contingencies.	Fortifications.	Fort Calhoun.
requisition No. 98, on account.			\$5,000 00	\$7,000 00	1824.				
requisition No. 38 on account.			13,291 00	6,753 00	Jan. 7	and which amount is charged to him in the abstract of payments made on account of Fort Monroe... \$3,323 23			
requisition No. 116, on account.			835 45	3,898 94		For am't stopp'd as above from Major Samuel Cooper on account of Fort Calhoun..... 486 66			
requisition No. 266, on account.			15,000 00	15,000 00					
amount received for sale of public property, and for labor supplied in 2d and 3d quarters 1824, & 4th quarter 1827.			43 88	1,402 78	May 22	For amount of stoppages made from J. Lewis & Co. in fourth quarter of 1823, charged to him in this settlement, and which amount is charged in the abstract of payments made on account of Fort Monroe, from which they have been deducted on statement of this date as chargeable to fortifications, Fort Monroe..... \$1,525 18		\$3,809 89	
requisition No. 363, on account.	\$5,300 00		7,000 00	3,000 00		For this amount stopped as above from Maj. Sam'l Cooper, Fort Calhoun.. 227 69			
requisition No. 364, on account.			5,000 00	5,000 00					
requisition No. 400, on account.			4,000 00	7,600 00					
requisition No. 485, on account.			10,300 00	12,600 00					
requisition No. 657, on account.			16,000 00	16,500 00					
requisition No. 829, on account.			5,000 00	5,000 00					
amount received for sale of public property, and for labor supplied in 1st and 2d quarters, 1828.				578 16	22	For sundry purchases and expenditures made by him in the 4th quarter 1823, Fort Monroe..... \$34,161 77		1,752 87	
requisition No. 966, on account.			10,000 00	20,000 00		His per diem allowance from 1st October to 31st December, 1823..... 184 00			
requisition No. 982, on account.			7,700 00	13,800 00		Stopped from Jacob Lewis & Co. on account.... 289 97			
amount received for repairs of chairs in 3d quarter 1828.				5 25		\$34,635 74			
requisition No. 310, on account.			3,000 00	16,000 00		Deduct amou't of stoppages made from J. Lewis & Co., carried to his credit on separate statement on account of fortifications, the advances to them			
requisition No. 484, on account.			5,000 00	11,000 00					
requisition No. 601, on account.			11,000 00	15,000 00					
requisition No. 686, on account.			11,000 00	14,000 00					
requisition No. 727, on account.			13,500 00	18,000 00					
requisition No. 952, on account.			22,500 00	11,300 00					
amount received									

General Charles Gratiot, in account with the United States.

	Repairs & contingencies.	Fortifications.	Fort Calhoun.	Fort Monroe.			Repairs & contingencies.	Fortifications.	Fort Calhoun.
on M. Parks.					1824.	having been made out of that appropriation..	\$1,525 18		
coffin in 2d				\$5 00					
r 1829....									
position No.									
on account			\$12,500 00	5,000 00			33,110 56		
position No.					May 22	For requisitions Nos. 323, 324, and 325, on account.....	219 50		
on account	\$3,115 80								
unt receive-						Ditto on account Fort Calhoun..	\$6,458 66		
old cop-						Deduct amount of stoppages made from Samuel Cooper, carried to his credit on separate state-			
d iron, for						ment on acc't. of fortifications,			
of laborers						the advances to him having been made out of that appropriation..	227 69		
rveys, and									
aterials and									
transferred									
ount for re-									
and con-									
encies.....			50 20	3,250 80					
amount,									
for labor									
ed, and ma-									
urnished									
th quarter									
and 1st &									
rters 1826,									
the funds					June 23	For sundry purchases and ex-			
ed to him						penses made by him in the			
repairs and						first quarter of 1824, on account			
encies of						of Fort Monroe	\$9,687 28		
ications, and						Amount stopped from J. Lewis			
d to Fort						& Co.	205 25		
be, and ad-						For permanent quarters	7,276 93		
l to his						His per diem allowance from			
on that ac-						1st Jan. to 31st March, 1824...	182 00		
, and now									
ed to him,									
mitted to									
edit on the									
ove named									
nts in this									
ment.....				19,717 91					
							17,351 46		
						Deduct the following sums credited in his account, viz:			
						Received from J. W. Jordan,			
						for smithwork for his vessel,			
						\$37; J. Bulkley, for repairs,			
						\$24 64; for fuel distributed to			
						mechanics, from			
forward..	27,415 80	84,325 58	616,878 06	848,501 90					

Dr.

General Charles Gratiot, in account with the United States.

	Repairs and contingen- cies.	Fortifica- tions.	Fort Cal- houn.	Fort Mon- roe.		Repairs and contingen- cies.	Fortifica- tions.	F
Brought forward..	\$27,415 80	84,325 58	616,878 06	848,501 90	1st November to 31st March, 1824, \$478 51 .	\$503 52		
					1824.			
					Nov. 10 For amount heretofore sus- pended, and for sundry pur- chases and expenditures made by him in the 2d quar- ter, 1824, and for stoppages made by him from Samuel Cooper and Jacob Lewis & Co.		\$405 34	10
					Dec. 9 For sundry purchases and expenditures made by him at Fortress Monroe in the third quarter of 1824 \$41,169 46			
					Amount stopped from J. Lewis & Co.	2,424 08		
					His per diem al- lowance from July 1 to Sept. 30, 1824	184 00		
					17 For sundry purchases and expenditures made by him in 3d quarter of 1824, on account of Fort Calhoun	\$21,217 85		
					Deduct am't of stoppages made from S. Cooper and carried to his credit on separate acc't for fortificat'ns, the advances to him having been made out of that appro- priation	1,358 62		19
					For amount of expenditures made by him at Fort Mon- roe, in the 3d quarter, 1824, on account of fortifications...	\$125 00		
					For this sum, stopped from Samuel Cooper in the 2d qr. of 1824, charged to him in this settlement, and which is charg'd by him in the			
Carried forward..	27,415 80	84,325 58	616,878 06	848,501 90				

General Charles Gratiot, in account with the United States.

	Repairs and contingencies.	Fortifications.	Fort Calhoun.	Fort Monroe.			Repairs and contingencies.	Fortifications.	Fort Calhoun.
at forward..	\$27,415 80	84,325 58	616,878 06	848,501 90	1824. Dec. 17	abstract of payments on account of Fort Calhoun, from which they have been deducted on settlement of this date as chargeable to fortifications... \$1,358 62			
					1825. June 3	For sundry purchases and expenditures made by him in the 4th quarter, 1824, on account of Fort Monroe.....\$33,836 04 His per diem allowance from the 1st October to 31st December, 1824 92 00 33,928 04 Deduct this sum, credited for smith-work.... 5 00 Ditto, on account Fort Calhoun.. 12,359 37 His per diem allowance from the 1st October to 31st December, 1824 92 00 12,451 37 Deduct amount stopped from S. Cooper and carried to his credit on separate account for fortifications, the advances to him having been made out of that appropriation..... 233 30 For this sum, being amount of stoppages made from S. Cooper, in the 4th quarter, 1824, charged to him in this settlement, and which was charged in the abstract of payments on account of Fort Calhoun, from which	.....	\$1,483 62	
at forward..	27,415 80	84,325 58	616,878 06	848,501 90					\$12,218 07

No. 12—Continued.

General Charles Gratiot, in account with the United States.

	Repairs and contingen- cies.	Fortifica- tions.	Fort Cal- houn.	Fort Mon- roe.			Repairs and contingen- cies,	Fortifica- tions.	Fort Cal- houn.
ht forward..	\$27,415 80	84,325 58	616,878 06	848,501 90	1825.				
					June 3	they have been deducted as chargeable to this ac- count		\$233 30	
					July 1	For sundry purchases and expenditures made by him at Fort Monroe in the 1st quarter of 1825, including per diem allowance from 1st January to 31st March, 1825			\$1,855 1
					Oct. 4	For requisition No. 572, drawn on requisition No. 3222, dated September 26, 1825, received from the of- fice of Second Auditor, to be brought to his credit on this account			
					Nov. 1	For amount of supplies fur- nished to and labor per- formed at Fort Calhoun to Dec. 31, 1824, originally procured for and charged to Fort Monroe, and subse- quently taken and applied to Fort Calhoun, per state- ment, sanctioned by the Secretary of War			13,906 98
					5	For requisition No. 585, on account			
					10	For sundry purchases and expenditures made by him at Fort Monroe in the 2d quarter, 1825, including his per diem allowance, (91 days, at \$2)			24,126 48
					Dec. 28	For sundry purchases and expenditures made by him at Fort Monroe in the 3d quarter, 1825, including his per diem allowance, (92 days, at \$2)			46,287 21
					31	For requisition No. 623, on account			1,773 54
					1826.				
					July 1	For sundry purchases and expenditures made by him in the 4th quarter of 1825 and 1st quarter of 1826, in- cluding his per diem al- lowance from October 1, 1825, to March 31, 1826 ..			24,189 92
					Oct. 15	For sundry purchases and expenditures made by him in the 2d quarter of 1826, including his per diem al- lowance from April 1 to to June 30, 1826			27,668 89
Forward..	27,415 80	84,325 58	616,878 06	848,501 90					

No. 12—Continued.

General Charles Gratiot, in account with the United States.

	Repairs & contingencies.	Fortifications.	Fort Calhoun.	Fort Monroe.			Repairs & contingencies.	Fortifications.	Fort Calhoun.
forward..	\$27,415 80	84,325 58	616,878 06	848,501 90	1826. Dec. 12	For requisition No. 777, drawn on requisition No. 4991, dated 29th Nov., 1826, for expenditures in 3d quarter 1826, to be brought to his credit by counter requisitions on account.....	\$339 40		
					1827. Mar. 16	For requisition No. 806, drawn on requisition No. 225, dated 18th March, 1827, received from Second Auditor's office, to be passed to his credit on the books of this office on account.....			
					May 15	For requisition No. 4960, issued 11th November, 1826, and charged to him on that day, the same having been cancelled, this entry is made to correct the debit raised against him.....		\$2,614 89	
					June 11	For sundry purchases and disbursements made by him at Fort Monroe, in the 3d and 4th quarters of 1826, including suspensions in former accounts now admitted, and his per diem allowance, from 1st July, to 30th September, 1826, on account.....			\$40,787 51
					15	For sundry purchases and disbursements made by him in the 1st quarter of 1827, on account.....			5,441 24
					Sept. 1	For sundry purchases and expenditures made by him in the 2d quarter of 1827, on account.....	2,874 73		13,952 21
					1828. Ap. 28	For sundry purchases and expenditures made by him at Fort Monroe, and Fort Calhoun, in the 3d and 4th quarters of 1827, and for provisions supplied through the Commissary General, for laborers employed at Fort Calhoun, from 6th October, 1826, to 30th September, 1827.....	4,925 14		26,755 80
forward..	27,415 80	84,325 58	616,878 06	848,501 90	Sept. 28	For sundry purchases and expenditures made by him			

No. 12—Continued.

General Charles Gratiot, in account with the United States.

	Repairs & contingencies.	Fortifications.	Fort Calhoun.	Fort Monroe.			Repairs & contingencies.	Fortifications.	Fort Calhoun.
Brought forward..	\$27,415 80	84,325 58	616,878 06	848,501 90	1828. Sept. 28	at Fort Monroe and Fort Calhoun, in the 1st and 2d quarters of 1828, including amount heretofore suspended, and now admitted on account.....	\$920 57	.....	\$40,928
					1829. Feb. 29	For sundry purchases and expenditures made by him at Fort Monroe, in the 3d quarter of 1828, on account.....	1,340 64	.....	24,597
					Aug. 18	For sundry purchases and expenditures made by him during the 4th quarter of 1828, and 1st and 2d quarters of 1829, on account..	2,377 10	.....	52,269
					22	For amount of provisions supplied through the Commissary General of Subsistence for the laborers employed at Fort Monroe and Fort Calhoun, from 1st April, 1828, to 31st May, 1829, which amount was deposited to the credit of the Treasurer on account of subsistence, per statement dated 21st August, 1829, on account.....	.....	.....	4,858
					1831. Mar. 24	For sundry disbursements made by him in the 3d quarter, 1829, including his per diem allowance, from 1st October, 1826, to 30th Sept., 1829, 1095 days at \$2, including also amount received during the 4th quarter of 1825, and 1st and 2d quarters of 1826, on account of repairs and contingencies, \$11,631 30, & fortifications, \$8,086 61, and expended for labor and materials for Fort Monroe, on account.....	14,292 63	8,086 61	48,962
						By balance due the U. States	27,070 21 345 59	84,325 58	610,539 6,339
	27,415 80	84,325 58	616,878 06	848,501 90			27,415 80	84,325 58	616,878
bal. per contra	\$345 59	.....	6,339 06	2,274 26					

General Charles Gratiot, in account with the United States.

	Fortifica- tions.	Repairs and contingen- cies.	Fort Cal- houn.	Fortress Monroe.		Fortifica- tions.	Repairs and contingen- cies.	Fort Cal- houn.
ance on set- tlement, No. 8879, account.....	\$8,086 61	\$11,522 42			1829.			
ance on set- tlement, No. 8903, account.....			\$42,751 13	\$12,604 12	For amount suspended in former settlement for the reason then stated, now al- lowed, per voucher filed.....			\$3 92
quisition No. on acc't.....			12,500 00	5,000 00	For sundry disbursements made by him during the 3d quarter of 1829, per ab- stracts and vouchers filed herewith, viz:			
quisition No. on acc't.....		3,115 80			F. Fort Monroe. \$37,200 59			
o, received copper and .....\$452 35					His per diem al- lowance from Oct. 1, 1826, to Sept. 30, 1829— 1,095 days, at \$2; half of which is chargeable to Fort Calhoun, below			
o, for hire coopers em- l on sur- .....\$5 40					1,095 00			
o ditto, for s & contin- s, 2,793 04				3,250 82	G. Fort Calhoun. 47,863 35			
nt received e of labor- mployed on s, &c.....			50 20		His per diem al- lowance from Oct. 1, 1826, to Sept. 30, 1829— 1,095 days, at \$2; half of which is chargeable, above, to Fort Monroe			
s amount, for labor ed and ma- urchased 4th quarter 5 and 1st d quarters 26, out of nds remit- him for re- nd contin- s, and ap- o Fortress e, and ad- o his cred- hat acc't, w charged a, and ad- o his cred- account of s and con- cies at the t settlem't, e explana- atement I, th.....					1,095 00			48,958 35
					H. Repairs and contingen- cies		\$3,006 92	
					For this amount received du- ring the 4th quarter, 1825, and 1st and 2d quarters of 1826, on this account, and expended for labor and ma- terials for Fortress Monroe, as per explanatory state- ment, marked I, filed here- with		11,631 30	
					For this amount received du- ring the 4th quarter, 1825, and 1st and 2d quarters of 1826, on this account, and expended for labor and ma- terials for Fortress Monroe, as per explanatory state- ment, marked K, herewith filed	\$8,086 61		
				11,631 30				

D

No. 12—Continued.

GENERAL ACCOUNT OF MONEYS ADVANCED.

General Charles Gratiot, in account with the United States.

	Fortifica- tions.	Repairs and contingen- cies.	Fort Cal- houn.	Fortress Monroe.			Fortifica- tions.	Repairs and contingen- cies,	Fort Ca- houn.
ditto ditto, out the appropri- on for fortifi- ions, and ad- ted to his dit in pres- statement, as explanatory em't K, here- h.....					1829.	Balance due United States			\$6,339
				\$8,086 61					
	\$8,086 61	\$14,638 22	\$55,301 33	40,572 85			\$8,086 61	\$14,638 22	55,301
						Deduct amount of voucher 4 from repairs and contin- gencies, the same being suspended in consequence of the receipt not being signed		\$345 59	
						Amounts brought down....	8,086 61	14,292 63	55,301
al., per contra		\$345 59	\$6,339 06	\$2,274 26		Balance due the U. States, as found by the Second Comptroller.....		345 59	6,339 0

RY DEPARTMENT, *Third Auditor's Office, March 3, 1831.*RY DEPARTMENT, *Second Comptroller's Office, March 24, 1831.*

Stated by

R. BURGESS

Ex.

JOHN DAVIS

*Statement of differences on settlement of General Charles Gratiot's
accounts, to the 30th September, 1829.*

Due the United States, per official statement, on account of Fortress Monroe-----	\$2,274 26
Ditto, of Fort Calhoun-----	6,339 06
	8,613 32
Ditto, per his general account-----	2,508 52
Difference-----	6,104 50
Accounted for as follows : Abstract E, 3d quar- ter 1825, vo. 29. F. S. Taylor, for hire of quarters for Lieuts. Mordecai and Dutton ; disallowed by the Second Comptroller, being chargeable to the Quartermaster's Depart- ment-----	\$20 00
Abstract for 4th quarter, 1825. This sum re- charged for quarters for Lieuts. Mordecai and Dutton, referred to the Second Comptroller for decision, by whom they were originally disallowed-----	20 00
Abstract F, 3d quarter 1825, vo. 31. Lieut. Col. Charles Gratiot, for per diem allowance from 1st January to 30th September, 1825, for Fort Calhoun ; not admissible, having received the same allowance for Fortress Mon- roe, during the same period-----	546 00
Abstract H, 4th quarter 1825, vo. 28. Lt. Col. Charles Gratiot, per diem allowance for Fort Calhoun, from 1st October to 31st De- cember, 1825 ; not allowed, for the reason above stated-----	184 00
Abstract B, 1st quarter 1826, vo. 15. Lt. Col. Gratiot's charge per diem allowance for Fort Calhoun, from 1st January to 31st March, 1826 ; not allowed for reasons above stated-----	180 00
Abstract C, 2d quarter 1826, vo. 58. Lt. Col. Gratiot's charge for per diem allowance for Fort Calhoun, from the 1st April to 30th June, 1826 ; not allowed, for the reason above stated ; one-half of the per diem charged to Fortress Monroe, was admitted to his credit on this account-----	182 00
Abstract E, 3d quarter 1826, vo. 65. Lt. Col. Gratiot's charge for per diem allowance for Fort Calhoun, from 1st July to 30th Septem- ber, 1826 ; disallowed, as in No. 58-----	184 00
Abstract L, 4th quarter 1828, vo. 22. Over- paid H. Goldsborough for 80 feet of stone, at \$2 per perch-----	1 60

Vo. 18. Overpaid Dr. Robert Archer, for medical attendance, from 1st April to 31st December, 1828. Dr. Archer being an army surgeon, was allowed by the Secretary of War \$20 per month, by letter 21st September, 1825; the charge now made is at \$40 per month, which is not allowed, for want of authority-----		\$90 00
Abstract K, 4th quarter 1828, vo. 29. Same as above, ditto-----		90 00
Abstract A, 1st quarter, 1829, vo. 28. Overcharged on record roll, No. 4, for Charles Bullock; not paid, and not embraced in the list of non-payments-----		66
Abstract C, 2d quarter 1829, vo. 44. Overpaid Underhill Dann, for ten perches of stone at \$2 50-----		25 00
This sum paid Dr. Robert Archer, on vo. No. 4, of abstract for 2d quarter of 1828, for medical services, from 6th November, 1827, to 31st March, 1828, at \$40 per month; disallowed for want of the authority for increasing the allowance to that sum-----		96 66
Abstract F, 3d quarter 1829, vo. 52, No. 7, for August, being amount due E. Richardson, not paid, and not deducted on roll of non-payments-----		88
Abstract F, for Fortress Monroe, 3d quarter 1829, vo. 53. Gen. C. Gratiot, for per diem allowance, from 13th November, 1821, to 30th September, 1829, 2,787 days, at \$2 per day-----	\$5,758 00	
Credit by this amount received-----	3,016 00	
		2,742 00
Of which his per diem from 1st October, 1826, to 30th September, 1829, 1,095 days, at \$1 per day, is admitted on this account, he receiving a credit in his account for Fort Calhoun, for the balance-----	1,095 00	
Disallowed, (see remarks annexed)-----		1,647 0
Abstract G, Fort Calhoun, 3d quarter 1829, vo. 51. Gen. C. Gratiot, for per diem allowance from 13th November, 1821, to 30th September, 1829-----	5,758 00	
Credit by this amount received-----	1,826 00	
		3,932 00
Of which per diem from 1st October, 1826, to 30th September, 1829, 1,095 days, at \$1 per day, is admitted on this account; he receiving		

credit on account Fortress Monroe, for the balance-----	\$1,095 00	
Disallowed, see remarks annexed-----		\$2,837 00
Amount of differences-----		6,104 80
Balance due United States, per Second Comptroller's statement-----	8,958 91	
Balance due United States, per Third Auditor's report-----	8,613 32	
Difference -----	345 59	
Arising on the suspension of vo. 4, of abstract for repairs and contingencies, by the Second Comptroller, the receipt not being signed----	345 59	

General Gratiot's per diem allowance for disbursing, at two dollars per day, being less than two and a half per cent. commission, has been regularly allowed, agreeably to regulations, to 30th September, 1826. In the present settlement he is allowed in continuation from 1st October, 1826, to 30th September, 1829, for a part of the time General Gratiot was Chief Engineer, stationed at Washington, and received the emoluments attached thereto; but inasmuch as the moneys were advanced to him, and the expenditures were made for him by Lieutenant Talcott, and the amounts all rendered in the general's name and have been so settled, the per diem allowance is passed to his credit.

In regard to the charge of two dollars per day on each fortification, say that of Fortress Monroe and Fort Calhoun now made, extending back to 13th November, 1821, for the latter it is not deemed to be admissible. By the regulations of March, 1821, article 67, No. 14, it is provided, that where there is no agent of fortifications, the superintending officer shall perform the duties of agent; and while performing such duties, the rules and regulations for the government of the agents shall be applied to him. And as the compensation for the performance of that extra duty, he will be allowed for moneys expended by him in the construction of fortifications at the rate of two dollars per day during the continuance of such disbursements, provided the whole amount of emolument shall not exceed two and a half per cent. on the sum expended.

By the regulation of March, 1825, article 67, paragraph 893, it is stated, "The engineer superintending the construction of a fortification, will disburse the moneys applied to the same, and as compensation for the performance of that extra duty, will be allowed at the rate of two dollars per diem during the continuance of such disbursements, provided the whole amount of emolument shall not exceed two and a half per cent. on the sum disbursed." Until the 30th June, 1825, Colonel Gratiot continued to charge as disbursing officer, only at the rate of two dollars per day; in the 3d quarter of that year he made a charge separate for Fort Calhoun, extending back to the 1st January, 1825, which was disallowed, on the ground that he was not entitled to a double allowance, the regulations, in the opinion of the accounting officers, not warranting it, and no case of the kind having ever been allowed.

No. 10,808.

TREASURY DEPARTMENT,
Third Auditor's Office, March 4, 1831.

I certify that I have examined and adjusted the accounts of General Charles Gratiot, and find that he is chargeable with the following sums, viz :

To balance on settlement No. 8,879, dated 18th August, 1829, on account of fortifications-----	\$8,056 61
Repairs and contingencies-----	11,522 42
To balance on settlement No. 8,903, dated August 22, 1829, on account Fortress Monroe-----	12,604 12
Fort Calhoun-----	42,751 13
To requisition No. 3,130, dated 15th September, 1829, on account of Fortress Monroe-----	5,000 00
Fort Calhoun-----	12,500 00
To ditto No. 3,150, dated 23d September, 1829, on account of repairs and contingencies-----	3,115 80
To amount received for sale of old copper and iron, and for hire of laborers, &c., Fortress Monroe-----	3,250 82
Fort Calhoun-----	50 20
To this amount, for labor supplied and materials purchased in the 4th quarter, 1826, out of the funds remitted to him for repairs and contingencies and applied to Fortress Monroe, and admitted to his credit on account of repairs and contingencies in the present statement, Fortress Monroe-----	11,631 30
To ditto out of the funds remitted to him on account of fortifications, and admitted to his credit in present statement, ditto -----	8,086 61
	118,599 01

And that he is entitled to credit on the same accounts as follows, viz :

By amount suspended in former settlement for reasons then stated, now allowed on account Fortress Monroe-----	\$3 00	
Fort Calhoun-----	3 92	
By sundry disbursements made by him in 3d quarter, 1829, including his per diem allowance, from 1st October, 1826, to 30th September, 1829, on account of Fortress Monroe-----	38,295 59	
Fort Calhoun----	48,958 35	
Repairs and contingencies-----	3,006 92	
By this sum received during the 4th quarter, 1825, and 1st and 2d quarters, 1826, on this account, and expended for labor and materials at Fortress Monroe, as per explanatory statement filed on account; repairs and contingencies-----	11,631 30	
By ditto ditto ditto fortifications-----	8,086 61	109,985 69
Leaving a balance of-----	8,613 32	

Due to the United States on account of Fortress	
Monroe-----	\$2,274 26
Fort Calhoun-----	6,339 06
	\$8,613 32

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor*.

To J. B. THORNTON, Esq.,
Second Comptroller of the Treasury.

Third Auditor's balance brought down-----	\$8,613 32
Add for suspension of voucher No. 4, repairs and contingencies, hospital kitchen, the receipt not being signed-----	345 59
Balance due the United States as found in office of Second Comptroller-----	8,958 91

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 24th day of March, 1831.

J. B. THORNTON,
Second Comptroller.

GENERAL ACCOUNT OF MONEYS ADVANCED.

General Charles Gratiot, in account with the United States.

	F't Colum- bus & Cas- tle Williams	Fort at Throg's Neck.	Fort at Grande Terre, La.			F't Colum- bus & Cas- tle Williams	Fort at Throg's Neck.
requisition No. 4476, on ac- count.....			\$20,000 00	1836. Oct. 6.	By Major John L. Smith, for amount turned over to him, 15th April, and 30th June, 1836, on account.....	\$3,000 00	\$47,956 62
requisition No. 4575, on ac- count.....			30,000 00		By requisition No. 2570, on ac- count.....		
requisition No. 4728, on ac- count.....	\$3,000 00	\$47,956 62			By balance due the United States		
	\$3,000 00	47,956 62	50,00 00			3,000 00	47,956 62
balance as per contra.							
is also charged with the fol- lowing balances on settlement 080, dated March 4, 1831.							
at Monroe.....\$2,274 26							
at Calhoun..... 6,339 06							
airs & contingencies 345 59							

NAVY DEPARTMENT, *Third Auditor's Office, January 11, 1837.*NAVY DEPARTMENT, *Second Comptroller's Office, January, 16, 1837.*

Stated by

R. BURGESS.

Examined by

JOHN DAVIS

No. 1,233.

TREASURY DEPARTMENT,
Third Auditor's Office, January 11, 1837.

I certify that I have examined and adjusted the account of General Charles Gratiot, and find that he is chargeable with the following sums, viz:

To requisition No. 4,476, dated 17th November, 1835, on account fort at Grande-Terre-----	\$20,000 00
To requisition No. 4,575, dated 21st December, 1835, on account ditto-----	30,000 00
To requisition No. 4,728, dated 26th January, 1836, on account Fort Columbus and Castle Williams-----	3,000 00
Fort at Throg's Neck-----	47,956 62
	100,956 62

And that he is entitled to credit as follows, viz:

By Major John L. Smith, for amount turned over to him, 15th April and 30th June, 1846, on account Fort Columbus and Castle Williams-----	\$3,000 00
Fort at Throg's Neck-----	47,956 62
By requisition No. 2,570, drawn on him on account fort at Grande-Terre-----	15,000 00
	65,956 62
Leaving a balance of-----	35,000 00
due to the United States on account of fort at Grande-Terre.	

He is also charged with the following balances on settlement No. 10,808, dated 24th March, 1831, viz:

Fort Monroe-----	\$2,274 26
Fort Calhoun-----	6,339 06
Repairs and contingencies-----	345 59

As appears from the statement and vouchers herewith transmitted, for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor.*

To ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this sixteenth day of January, 1837.

ALBION K. PARRIS,
Second Comptroller.

No. 12--Continued.

General Charles Gratiot, in account with the United States.

	Fort Mon- roe.	Fort Cal- houn.	Repairs and con- tingencies of forti- fications.	Fort at Grande Terre.	Barracks, Quar- ters, &c.	Quartermaster's Department.			Fort Mon- roe.	Fort Cal- houn.	Repairs and con- tingencies of forti- fications.	Fort at Grande Terre.
To balance on settle- ment No. 10808.....	\$2,274 26	\$6,339 06	\$345 59				1831	By requisition No. 3448, dated 17th Dec., 1838, drawn on requisition No. 710, dated 13th Dec., 1838, & received from 2d Auditor's office.....	\$2,274 26	\$6,339 06	\$345 59	\$1,805 00
To balance on settle- ment No. 1223.....				\$35,000 00				By general account of money advanced for this allowance for quarters & fuel, from 1st April, 1836, to the 6th of Dec., 1838, per acc't filed here-with.....				
Balance due Gen. Gratiot.....					\$905 80	\$614 67		Balance due the U.S....				33,194 92
	2,274 26	6,339 06	345 59	35,000 00	905 80	614 67			2,274 26	6,339 06	345 59	35,000 00
To balance due United States.....				33 194 92				By balances due Gen. Gratiot....				

No. 4,697.

TREASURY DEPARTMENT,
Third Auditor's Office, December 15, 1838.

I certify that I have examined and adjusted the account of General Charles Gratiot, United States Engineer, and find that he is chargeable as follows, viz :

1831. March 24. To balances on settlement No. 10,808,	
on account of Fort Monroe-----	\$2,274 26
Fort Calhoun -----	6,339 06
Repairs and contingencies of fortifications-----	345 59
	8,958 91
1837. January 16. To balance on settlement No. 1,223, on	
account of fort at Grande-Terre-----	35,000 00
Amounting to-----	43,958 91

And that he is entitled to credit as follows :

By requisition No. 3,448, dated 17th December,	
1838, drawn on requisition No. 710, dated	
13th December, 1838, and received from	
the Second Auditor's office, on account of	
Fort Monroe-----	\$2,274 26
Fort Calhoun-----	6,339 06
Repairs and contingencies of for-	
tifications-----	345 59
Fort at Grande-Terre-----	1,805 08
	\$10,763 99

By general account of moneys advanced for his allowance for quarters and fuel, from the 1st April, 1836, to 6th December, 1838:

Barracks, quarters, &c-----	905 80	
Quartermaster's department----	614 67	
	1,520 47	12,284 46

Leaving a balance due the United States----- 31,674 45
as follows :

Balance due the United States, on account of		
fort at Grande-Terre-----		\$33,194 92
Balances due General Gratiot, on account bar-		
racks, quarters, &c-----	\$905 80	
Balances due General Gratiot, on account Quar-		
termaster's department-----	614 67	
	1,520 47	
Balance due the United States-----		31,674 45

For the balances due General Gratiot (say \$905 80 and \$614 67) a requisition will issue in his favor, to be carried to his credit by counter requisition, on account of fort at Grande-Terre, as appears from the state

ment and vouchers herewith transmitted, for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor.*

To ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this seventh day of December, 1838.

ALBION K. PARRIS.

Second Comptroller.

No. 12—Continued.

manuscript marked B, and referred to in the foregoing bill of exceptions, is in the words and figures following

GENERAL ACCOUNT OF MONEYS ADVANCED.

General Charles Gratiot, in account with the United States.

	Quartermaster's Department.	Barracks, Quar- ters, &c.	Transportation Officers' baggage.	Contingencies of Fortifications.	Fort Calhoun.	Fort at Grande Terre, La.			Quartermaster's Department.	Barracks Quar- ters, &c.	Transportation Officers' baggage.	Contingencies of Fortifications.	Fort Calhoun.
Balance settle- ment No.							1838. Dec. 17	By balance on settle- ment, No. 4697.....					
.....						\$33,194 92			\$614 67	\$905 80			
Balance him....	\$634 67	\$905 80	\$612 75	\$345 59	\$1,404 00			For sundry- disburse- ments made by him at Fort Mon- roe in 1825, 1826, and 1827, includ- ing vouchers here- tofore sus- pended and now allow- ed, and also his acct's for transporta- tion of bag- gage for va- rious jour- neys per- formed by him, as chief of the corps of engineers in 1836 and 1837, per ab- stracts and vouchers fil- ed herewith	20 00	.....	612 73	\$345 59	\$1,404 00
								By balance due U. S....	.....	.....	.....	.....	.....
	\$634 67	905 80	612 75	345 59	1,404 00	33,194 92			634 67	905 80	612 73	345 59	1,404 00
Balance contra	.....	.....	.....	.....	.....	33,194 92		By balance due him....	634 67	905 80	612 73	345 59	1,404 00

DEPARTMENT, *Third Auditor's Office, January 30, 1839.*

Stated by **R. BURGESS.**

Statement of differences on settlement of General Gratiot's accounts. Reported January 30, 1839.

Due United States, on official statement on account of fort at Grande-Terre-----		\$33,194 92
Due him on account of quartermaster's department-----	\$634 67	
Barracks and quarters, &c-----	905 80	
Transportation of officers' baggage-----	612 73	
Contingencies of fortifications-----	345 59	
Fort Calhoun-----	1,404 00	
		3,902 79
		29,292 13
Balance claimed per his account-current, dated 11th January, 1839-----		14,860 61
		44,152 64
Difference-----		
Arising as follows : The first item in General Gratiot's account is for disbursing \$603,727 42 on account of Fort Calhoun, from the 13th November, 1821, to the 30th September, 1829, 2,879 days, \$2 per day, being less than two and a half per cent. on the amount disbursed, as allowed by the general regulations of the army, to an officer disbursing at a fortification, vide article 67, paragraph 893-		
The second item is for ditto, \$848,718 80 on account of Fort Monroe, during the same period, 2,879 days at two dollars per day-----	5,758 00	
	5,758 00	
	11,516 00	
And in his account he credits, " Amount credited my account by the Third Auditor, as allowance for disbursements"--	5,758 00	
	5,758 00	
In the various statements of General Gratiot's accounts he has been allowed and credited with two dollars per day, for disbursing for the whole of the period above charged for, at Old Point Comfort, agreeably to regulations. The above-mentioned charges having heretofore been made and decided upon by the accounting officers of the treasury, reference is made to those decisions, and the above-mentioned item of \$5,758 is accordingly disallowed----		
The third item is for ditto, \$33,447 26 on account of contingencies of fortifications, at two and a half per cent., as authorized by regulations above referred to, not admissible-----	5,758 00	
These disbursements were all made at Old Point Comfort, and were for objects connected with and formed part of the fortifications at that place, and during the entire period within which the disbursements were made. He has already charged and been allowed the full amount authorized by the regulations for disbursing. See former decisions of the accounting officers of the treasury.	836 18	

General Gratiot charges this amount disallowed by accounting officers of the treasury, for the quarters furnished to Lieutenants Dutton and Mordecai----- \$40 00

Of which this sum, being the actual amount paid for the above mentioned quarters, and originally suspended on the settlement of his accounts, as chargeable to the quartermaster's department, is now admitted----- 20 00 \$20 00

General Gratiot subsequently re-charged the above mentioned sum of twenty dollars, but at the same time omitted to credit the disallowance, thus making a double charge of the amount.

The next item is for ditto, ditto, ditto, payment to Dr. Robert Archer, for medical services ----- 276 00

This charge has before been made and disallowed by the accounting officers of the treasury, for the reasons before stated, to which reference is now made.

This sum charged for his extra services in conducting the affairs connected with the civil works of internal improvement carried on by the United States, and referred to the engineer department for execution, and which did not constitute any part of his duties as a military officer, from the 1st day of August, 1828, to the 6th day of December, 1838, inclusive, $10\frac{1}{2}\frac{2}{3}$ years, at \$3,600 per annum, that being the pay granted to John S. Sullivan, David Shriver, James Geddes, and Nathan S. Roberts, esqs., civil engineers, employed under the act of 30th April, 1824, entitled "An act to procure the necessary surveys, plans and estimates, upon the subject of roads and canals"----- 37,262 46

Not allowed. This is a new claim, now for the first time presented by General Gratiot. Lieutenant Colonel Gratiot, of the corps of engineers, was made a full colonel on the 24th of May, 1828, and on the 30th of July, 1828, assumed his station as chief of the corps of engineers, at the seat of government, as required by the general regulations of the army, of 1825. Act 67, par. 887, directs "that the chief of the corps of engineers shall be stationed at the seat of Government, and shall direct and regulate the duties of the corps of engineers, and those also of such of the topographical engineers as may be attached to the engineer department, and shall also be the inspector of the Military Academy, and be charged with its correspondence."

Par. 888. "The duties of the engineer department comprise reconnoitring and surveying for military purposes, and for internal improvements, together with the collection and preservation of topographical and geographical memoirs and drawings referring to those objects," &c. "Also the superintendence of the execution of the acts of Congress in relation to internal improvements, by roads and canals, the navigation of rivers, and the repairs and

improvements connected with the harbors of the United States, or to the entrance into the same, which may be authorized by acts of Congress, with the execution of which the War Department may be charged."

By these regulations it is made the express duty of the chief of the corps of engineers to superintend the execution of the acts of Congress in relation to all works of internal improvement, and it does not appear in these or any subsequent regulations, or in any of the acts of Congress authorizing works of internal improvement, that any extra allowance was ever made or contemplated to be made to the chief of the corps of engineers, for extra services, nor can the services here charged for be deemed extra, when, by the regulations in force before and at the time of his assuming the duties of his office, were in part the very duties he was, by his appointment, directed to perform; and further, on the 26th of March, 1829, Colonel Gratiot received a brevet of brigadier general, to take effect from the day that he received his promotion as colonel, on the 24th May, 1828, and with it all the pay and emoluments of a brigadier general, besides double rations allowed to him in consequence of his promotion and residence at the seat of Government. The brevet rank was unquestionably conferred upon General Gratiot in consequence of his new command as chief of the corps of engineers, to whom was confided the superintendence of all works of internal improvement, as appears by the regulation before mentioned; and in that way was he compensated for all the duties he was required to perform. On the 30th of June, 1831, the Secretary of War established a separate bureau for the topographical department, and directed a transfer from the office of the chief engineer, of the correspondence connected with the topographical department, to that bureau; thus relieving the chief of the engineer department from the direction and superintendence of all that portion of duty which, by the regulations of 1825, above recited, he was charged with.

The cases cited by General Gratiot, of pay granted to John S. Sullivan, David Shriver, James Geddes, and Nathan S. Roberts, civil engineers, are by no means analogous to his claim; they were civil engineers, appointed by the Secretary of War, in virtue of an act of Congress, and charged with the performance of certain specific duties, and for which they were paid out of an appropriation for that purpose, a compensation fixed by the Secretary of War: they held no military rank, nor received compensation from the Government, in any other capacity or for any other service. Not so with General Gratiot; he was an officer of the army, exercising a position as chief of the corps of engineers, and in virtue of which he had received the brevet rank of brigadier general, and the pay and emoluments of

his brevet, besides double rations. It is fair to presume that the brevet was conferred, in part, in consequence of the increased number of persons and the importance of the works under his charge, produced in a great measure by the appointment of civil engineers and their attendants; besides, the act of the 3d March, 1835, expressly prohibits any extra allowance whatsoever to any officer of the army. See act entitled "An act making additional appropriations for the Delaware breakwater, and for certain harbors, and removing obstructions in and at the mouths of certain rivers, for the year 1835."

Amount of difference ----- \$44,152 64

No. 5,186.

TREASURY DEPARTMENT,
Third Auditor's Office, January 30, 1839.

I certify that I have examined and adjusted the account of General Charles Gratiot, and find that he is chargeable, on account of fort at Grande-Terre, La., as follows :

To balance on settlement No. 4,697, dated December 17, 1838----- \$33,194 92

And that he is entitled to credit as follows, viz :

By balance on settlement No. 4,697, dated December 17, 1838, on account quartermaster's department-----	\$614 67	
Barracks, quarters, &c.-----	905 80	
Sundry disbursements made by him at Fort Monroe, in 1825, 1826, and 1827, including vouchers heretofore suspended and now allowed, and also his account for transportation of baggage on various journeys performed by him, as chief of the corps of engineers, in 1836 and 1837, as follows, viz :		
Quartermaster's department-----	20 00	
Transportation of officers' baggage-----	612 75	
Contingencies of fortifications-----	345 59	
Fort Calhoun-----	1,404 00	
		3,902 81
Leaving a balance of -----		29,292 11

due the United States as follows :

On account of fort at Grande-Terre, La.-----		33,194 92
Balances due him on account quartermaster's department-----	\$634 67	
Barracks, quarters, &c.-----	905 80	
Transportation of officers' baggage-----	612 73	
Contingencies of fortifications-----	345 59	
Fort Calhoun -----	1,404 00	
		3,902 79
		<u>\$29,292 13</u>

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

PETER HAGNER, *Auditor.*

To ALBION K. PARRIS, Esq.,
Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

Admit and certify the above balance, this 15th day of February, 1839.

ALBION K. PARRIS,
Second Comptroller.

*Facts admitted by the parties.**

The United States, by the district attorney, admitted that the defendant should receive credit for the sum of \$5,758, being the fifth item of his account to be deducted from the balance found due from him to the United States on the treasury transcripts given in evidence; and also that the sum of \$276, being one-half of the eleventh item in his account, should, in like manner, be credited to him against the balance on said transcripts.

The defendant withdrew his claim for the fourth, ninth, tenth, twelfth, and thirteenth, and one-half of the eleventh items in his account, the same having been allowed him in former settlements.

No. 13.

Major Lewis's deposition.

Interrogatories propounded by the defendant to William B. Lewis:

1st. What office or station do you fill, and how long have you filled the same?

3d. Examine the files of your office, and furnish therefrom a copy of Charles Gratiot's pay account for March, 1829, it being the first of the duplicate account of said Gratiot, presented by Paymaster T. P. Andrews, and passed to his credit on the settlement of his account which included that item of charge. A copy of the voucher then submitted by said Andrews, and reported on, is the one now called for, and not a copy of the duplicate retained by Paymaster Andrews and kept in his private files. And state further, whether the uniform practice in the Second Auditor's office is not, on the presentation of an account for retrospective pay, to pass the same only on the authority of the Secretary of War or Second Comptroller. And state what have been the exceptions, if any, to the rule and practice, since you have held the office of Second Auditor.

1st. To the first interrogatory, the deponent, William B. Lewis, replies: That he is now Second Auditor of the Treasury Department, which office he has held since the 22d of March, 1829.

* Book D, new Record.—Supreme Court of the United States. No. 60. Charles Gratiot, plaintiff in error, *vs.* the United States. In error to the Circuit Court of the United States for the district of Missouri.

3d. In answer to the third interrogatory the deponent declares: That, after repeated searches in the files of the office, he has been unable to find the pay account of Charles Gratiot for March, 1829, in the place where it should be filed. This, in all probability, has arisen from its having been heretofore referred to, and when returned to the files was misplaced in some other settlement than that to which it belonged. The account is believed to be still in the office: but to make a thorough search for it, without any guiding clue, would require much labor and a long time. The deponent further states, that the usage of the Second Auditor's office, on the presentation of an account for retrospective pay or allowances, not expressly authorized by law or regulations, is, to require the special sanction of the Secretary of War or Second Comptroller. The only exception to this usage the deponent is at present aware of, is when an officer claims retrospectively his brevet pay and emoluments for the command of troops, and supports his claim by satisfactory proof from the rolls of the army, that his command was actually "according to his brevet rank," as required by the act of 16th April, 1818; the claim is allowed without any other sanction.

*Additional interrogatories propounded by defendant to W. B. Lewis,
Second Auditor of the Treasury.*

Additional interrogatories by defendant:

1st. You state, in your answer to defendant's third interrogatory, "that after repeated searches in the files of the office, he [you] has been unable to find the pay account of Charles Gratiot for March, 1829, in the place where it should be filed." Please state the period when the search for the said account was first made, and it was discovered not to be "in the place where it should be filed." State also whether the paper marked "P," appended to the Third Auditor's report of the 5th of April, 1841, on Charles Gratiot's account of the 23d March, 1841, to which is annexed your certificate in the following words, namely: "I certify that the above is a true copy taken from the account of General Gratiot as passed in this office.—W. B. Lewis, Second Auditor, April 5th, 1841," is a *true copy* in every particular of the pay account which "passed" your office, and should now be there on file.

1st. In answer to the first interrogatory, the deponent, W. B. Lewis, states that he has no knowledge of any unsuccessful search for the *original* pay account of Charles Gratiot, for March, 1829, prior to the time when the copy marked "P," referred to in the first interrogatory, was obtained from this office. And the deponent further states that the words "as passed in this office," contained in his certificate annexed to said copy, marked "P," and "appended to the Third Auditor's report of 5th April, 1841," had reference to the *amount* of that account, "as passed in this office," to the credit of the paymaster, and not to the details or remarks on the face of it as being "a true copy" of the *original* account, inasmuch as said *original* not being found on the file where it belongs, the copy marked "P" was made from the pay account retained by the paymaster.

Defendant's Interrogatories.

Interrogatories propounded to the Honorable J. H. Eaton, by the defendant :

1. What offices or stations did you fill during the month of March, 1829, and how long did you fill the same?

Answer. I was a senator in Congress until the 13th of March, (I think it was,) when I was appointed Secretary of War, where I remained until the summer of 1831.

2. Look at the two papers hereto appended, and state whether you have seen the originals of which they are copies. Please state further the when, as also the action you gave to the pay account, on their being submitted to you for consideration.

Answer. I recollect that, shortly after entering the War Department, General C. Gratiot, then at the head of the Engineer Corps, submitted a claim for pay as brevet brigadier general, submitting for my information, at the same time, an order made by President Monroe in the case of General Macomb, who had occupied the same place held by General Gratiot, and which awarded to him the pay of brevet brigadier. Acting upon that rule, I allowed the claim of General Gratiot; and I am impressed with the belief, nay, feel confident, that I endorsed on the account "allowed," and signed my name; indeed, I must have signed it, or the auditor would not have passed it. Whenever a claim was laid before me, if "allowed," I so wrote; or if refused, "disallowed" was written, and my reasons given for doing so. The order annexed is the one I have made reference to in my statement.

JNO. H. EATON,
Late Secretary of War.

Copy.

The nature and extent of General Macomb's command, taking into view the military academy at West Point, and the topographical engineers which are attached to his command, as chief of the corps of engineers, his brevet pay appears to be clearly within the meaning of the laws applicable to the case. The allowance of the pay of a brigadier to the assistant engineer, General Bernard, is an additional reason in favor of the allowance.

JAMES MONROE.

JUNE 12, 1822.

The brevet pay and emoluments of brigadier will commence from the time that he was arranged to his present command. J. M.

The above order is the one I have made reference to

JNO. H. EATON.

DISTRICT OF COLUMBIA, *Washington county, to wit:*

Sworn and subscribed before me, this seventeenth day of March, eighteen hundred and forty-two.

N. CALLAN, Jr., J. P. [SEAL.]

General Scott's opinion on the power of the President to remove an officer of the army, in the absence of conviction before a general court-martial, or of a special law to that effect.

(See extracts from Story's Commentaries, hereto annexed.)

Brief on the power to dismiss without trial, and sentence to that effect, a military storekeeper or other commissioned officer of the army.

1. Letter of Mr. Miller, of Springfield, Massachusetts, April 18, 1845, claiming for the President the right to dismiss the storekeeper there ;
2. Letter dismissing Mr. Charles Little, storekeeper, August 28, 1835; and
3. Opinion of Mr. Attorney General Butler, February 25, 1837, on which Mr. Little was restored to office.

These papers have been referred to me by the Secretary of War. They present a grave question—one that has been but little discussed, and only, as far as I know, between President Adams and myself, in 1828. On that occasion the President *practically* admitted his want of power to dismiss, without a judicial sentence to that effect.

I am aware that many Presidents have exercised the power in question ; but a strong negative is found in the fact that every officer so dismissed from the army has, on demand to that effect, been restored and allowed the benefit of a trial by his peers. The dismissed officers who neglected to make such demand, and who, therefore, were never restored, probably looked upon their arbitrary dismissal as an act of mercy to themselves, respectively, as covering up the details of guilt and shame which, otherwise, would have gone on judicial record and been made perpetual.

I do not mean to discuss the question of "removals," or the power to dismiss from the public service in general. *That* has been elaborately argued and reviewed at different periods, and perhaps yet remains an open question. I shall confine this brief to the tenure of the *commissioned officers of the army*, which rests on *special grounds*.

An army, in a republic, it will be admitted, is a delicate, nay, a most dangerous machine, unless held in the strictest discipline, *i. e.* in the strictest obedience to the constitution and the laws. It is equally essential to the good of a republic, that its army should also not be a *slavish machine* ; that all arbitrary and capricious action over it should be excluded ; that it be at all times under the government of fixed and constitutional authority. *Misera est servitus ubi jus est aut vagum aut in cognitum.*

"The Government (with us, the legislature) ought precisely to determine the functions, duties and rights of all military men, soldiers, officers, chiefs of corps, generals,"—*Vattel*.

"The Congress shall have power to make rules for the government and regulation of the land and naval forces."

This power was taken up, and, for the time being, in respect to the army, exhausted, by the act (commonly called the rules and articles of war*) of April 10, 1806.—Cross's M. Laws, pp. 107, 123.

* Established by the old Congress, June 30, 1775; November 7, 1775; September 20, 1776, &c., &c.; which were recognised under the constitution by the act of September 29, 1789.—Cross, 41.

It is of the very essence of rules for the government of the public forces, that they should define and prohibit *offences*, prescribe *penalties*, and, in addition, designate the *tribunal* which is to ascertain such offences and apply the prescribed penalties.

Now all this is clearly done in the act of 1806. Congress has therein carefully enumerated and defined every *possible* act which it chose to consider an offence in the military, State, or land forces; and to exclude all arbitrary action, has placed in juxtaposition with each and every offence so created, in the same article, the tribunal (a court-martial, and not the President) to judge the alleged offence and to apply the prescribed punishment. How can that connexion, in a constitutional act, and therefore part of the "supreme law of the land," be legally dislocated, (except by another such act,) and the President seize upon a jurisdiction so carefully lodged in other hands?

A remarkable legislative construction, supporting, nay, establishing my view of the power in question, is found in the "act concerning the disbursement of public money," January 31, 1823, sect. 3, Cross, p. 216. Here an offence, previously created, and made punishable only by a court, under the 39th article of war, (Cross, p. 114) is, by special dislocation, to "be promptly reported to the President of the United States, and (the offender) dismissed from the public service." (This power has, in the case of Quartermaster Captain Davis, been exercised within a week. The dismissal could only have been summarily made by direction of law.)

General courts-martial must, under the 64th article of war, (Cross, p. 117,) consist of from five to thirteen members, each taking an oath (69th article) to "try and determine," according to the rules and articles; "and if any doubt shall arise, not explained by the said articles, according to your conscience, the best of your understanding, and *custom of war in like cases*," or what may be termed the common law of the army.

This *common law* is recognised by Mr. Attorney General Wirt, April 5, 1824; and again, February 20, 1828, he distrusts his "own *judgment*," in reference to the existing usage and practice of the army, known only to *military men*.—Opinions of the Attorney Generals pp. 489–596.

No sentence of a court-martial, "in time of peace, extending to the loss of life, or the *dismissal* of a *commissioned* officer, or which shall, either in time of peace or war, respect a general officer, shall be carried into execution until after the whole proceedings (of the court) shall have been laid before the President of the United States for his confirmation or disapproval and orders in the case."—65th article, Cross, p. 117.

Here is extreme care taken by Congress of the commission of an officer, often more dear to him than life, even after it has been submitted to the judgment of his peers.

In respect to the army and navy, the President is only the "*first general and admiral of the confederacy*."—*Federalist*, No. 69, by General Hamilton, written in 1788, pending the question, Shall the constitution be adopted? in order to dispel the fear that the President would become, like George III, the fountain of all honor and power over the army and navy. Indeed, it was only as the "first general" that the President ever appointed a general court-martial, down to 1830; for the 65th article of war only gives that power, in terms, to "any general commanding an army, or colonel commanding a separate department." In a certain class of cases,

